

Honorable Barbara J. Rothstein

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT TACOMA

FREDRICK and ANNALESA THOMAS; and  
JO-HANNA READ, as Guardian ad Litem of  
E.T., a minor,

Plaintiffs,

v.

JASON CANNON; BRIAN MARKERT; RYAN  
MICENKO; MICHAEL WILEY; MICHAEL  
ZARO; CITY OF FIFE; CITY OF LAKEWOOD;  
and PIERCE COUNTY METRO SWAT TEAM,

Defendants.

FREDRICK THOMAS and ANNALESA  
THOMAS, as Co-Administrators of the Estate of  
Leonard Thomas, and its statutory beneficiaries,

Plaintiffs,

v.

BRIAN MARKERT; MICHAEL WILEY;  
NATHAN VANCE; MICHAEL ZARO; SCOTT  
GREEN; JEFF RACKLEY; CITY OF FIFE;  
CITY OF LAKEWOOD; PIERCE COUNTY  
METRO SWAT TEAM; and JOHN DOES 1  
through 10,

Defendants.

Nos. 3:15-cv-05346 BJR  
3:16-cv-05392  
CONSOLIDATED CASES

**DECLARATION OF MEAGHAN M.  
DRISCOLL IN OPPOSITION TO  
DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT**

1 Meaghan M. Driscoll declares as follows:

2 I am an attorney of record for the Plaintiff, The Estate of Leonard Thomas. I make this  
3 declaration in support of Plaintiff's Response in Opposition to Defendants' Motion for Summary  
4 Judgment. I am above the age of eighteen and am competent to testify to the matters described  
5 herein and do so based on my own personal knowledge.  
6

7 1. Attached as Exhibit 1 are true and accurate excerpts of the deposition of Annalesa  
8 Thomas.

9 2. Attached as Exhibit 2 are true and accurate excerpts of the deposition of Kimberly  
10 Thomas.  
11

12 3. Attached as Exhibit 3 are true and accurate excerpts of the deposition of Brad  
13 Blackburn.

14 4. Attached as Exhibit 4 are true and accurate excerpts of the deposition of Michael  
15 Zaro.

16 5. Attached as Exhibit 5 is a true and accurate copy of the May 23-24, 2013 scene  
17 personnel log.  
18

19 6. Attached as Exhibit 6 are true and accurate excerpts of the deposition of Ryan  
20 Micenko.

21 7. Attached as Exhibit 7 are true and accurate excerpts of the deposition of Brian  
22 Markert.

23 8. Attached as Exhibit 8 are true and accurate excerpts of the deposition of Michael  
24 Wiley.  
25

26 9. Attached as Exhibit 9 are true and accurate excerpts of the deposition of Zachary  
27 Kenyon.

1           10. Attached as Exhibit 10 are true and accurate excerpts of the deposition of Mark  
2 Eakes.

3           11. Attached as Exhibit 11 are true and accurate excerpts of the written statement of  
4 Officer Brian Markert.

5           12. Attached as Exhibit 12 are true and accurate excerpts of Metro Crime Response  
6 Unit's interview of Michael Wiley, taken on May 24, 2013.

7           13. Attached as Exhibit 13 are true and accurate excerpts of the deposition of Nils  
8 Luckman.

9           14. Attached as Exhibit 14 are true and accurate excerpts of the Metro Crime  
10 Response Unit's interview of Mark Eakes, taken on May 24, 2013.

11           15. Attached as Exhibit 15 are true and accurate excerpts of the Metro Crime  
12 Response Unit's interview of Zachary Kenyon, taken on May 24, 2013.

13           16. Attached as Exhibit 16 are true and accurate excerpts of the deposition of Charles  
14 Porche.

15           17. Attached as Exhibit 17 are true and accurate excerpts of the deposition of Tom  
16 Thompson.

17           18. Attached as Exhibit 18 are true and accurate excerpts of the SWAT 2 Transcript.

18           19. Attached as Exhibit 19 are true and accurate excerpts of the transcribed audio  
19 interview of Brian Markert, taken June 4, 2013.

20           20. Attached as Exhibit 20 are true and accurate excerpts of the Metro Crime  
21 Response Unit's interview of Mike Malave, taken on May 24, 2013.

22           21. Attached as Exhibit 21 are true and accurate excerpts of the Metro Crime  
23 Response Unit's interview of Mike Zaro taken on May 24, 2013.

22. Attached as Exhibit 22 is a true and accurate excerpt of the deposition of John Derig.

23. Attached as Exhibit 23 is a true and accurate excerpt of the deposition of Matthew Watson.

24. Attached as Exhibit 24 is a true and accurate excerpt of the deposition of Micah Wilson.

25. Attached as Exhibit 25 is a true and accurate excerpt of the Metro Crime Response Unit's interview of Nils Luckman, taken on May 24, 2013.

26. Attached as Exhibit 26 is a true and accurate copy of the City of Lakewood Policy 41.2.7 "Responding to Persons with Mental Illness".

27. Attached as Exhibit 27 are true and accurate copies of policies and procedures from the City of Fife, City of Buckley, and City of Sumner regarding interactions with individuals with mental illness.

28. Attached as Exhibit 28 is a true and accurate copy of the Professional Standards Shooting Review Board decision letter and supporting documentation regarding Brian Markert's shooting of Leonard Thomas.

I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and accurate to the best of my knowledge and belief.

DATED this 21st day of February, 2017 at Tacoma, Washington.

By: /s/ Meaghan M. Driscoll  
Meaghan M. Driscoll, WSBA No. 49863



**CERTIFICATE OF SERVICE**

I hereby certify that on the 21<sup>st</sup> day of February, 2017, I electronically filed the forgoing with the Clerk of the U.S. District Court for the Western District of Washington using the CM/ECF system, which will send notification of such filing to all counsel of record:

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DATED this 21st day of February, 2017.

CONNELLY LAW OFFICES, PLLC

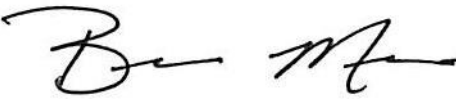
By   
 Brooke E. Marvin, Paralegal

EXHIBIT 1



Page 1		Page 3	
1	UNITED STATES DISTRICT COURT	1	I N D E X
2	WESTERN DISTRICT OF WASHINGTON AT SEATTLE	2	
3		3	EXAMINATION BY: PAGE(S)
4	FREDERICK and ANNALESA THOMAS; )	4	MR. JOLLEY 6
5	and JO-HANNA READ, as Guardian )	5	MR. FORD 129
6	ad Litem of E.T., a minor, )	6	
7	Plaintiff(s), ) 3:15-cv-05346 BJR	7	
8	vs. )	8	
9	JASON CANNON; BRIAN MARKERT; )	9	
10	RYAN MICENKO; MICHAEL WILEY; )	10	
11	MICHAEL ZARO; CITY OF FIFE; )	11	
12	CITY OF LAKEWOOD; and PIERCE )	12	EXHIBITS FOR IDENTIFICATION PAGE
13	COUNTY METRO SWAT TEAM, )	13	Exhibit 1 Charging Documents in Cause 19
14	Defendant(s). )	14	No. 00 1 01410 6
15		15	Exhibit 2 Declaration for Determination of 23
16	VIDEOTAPED DEPOSITION UPON ORAL EXAMINATION OF	16	Probable Cause
17	ANNALESA THOMAS	17	Exhibit 3 Tacoma Police Department Arrest 40
18		18	Report
19	9:30 A.M.	19	Exhibit 4 Petition for Order for Protection 43
20	AUGUST 8, 2016	20	Exhibit 5 Fife Police Department Case 46
21	2301 N. 30TH STREET	21	Supplemental Information
22	TACOMA, WASHINGTON	22	Exhibit 6 Fife Police Department Case 49
23		23	Supplemental Information
24		24	Exhibit 7 Photograph 54
25	REPORTED BY: PATSY D. JACOY, CCR 2348	25	Exhibit 8 Photograph 57
Page 2		Page 4	
1	A P P E A R A N C E S	1	EXHIBITS FOR IDENTIFICATION PAGE
2		2	Exhibit 9 Photograph 59
3	FOR THE PLAINTIFFS:	3	Exhibit 10 Photograph 63
4	TIMOTHY K. FORD	4	Exhibit 11 Fife Police Department Incident 71
5	MacDonald Hoague & Bayless	5	Detail Report
6	705 Second Avenue, Suite 1500	6	Exhibit 12 CD of 911 call 89
7	Seattle, WA 98104	7	Exhibit 13 Transcript of interview of 110
8	206.622.1604	8	Annalessa Thomas
9	timf@mhb.com	9	Exhibit 14 Defendants' First Interrogatories 118
10	FOR THE PLAINTIFF ESTATE OF LEONARD THOMAS:	10	and Requests for Production to
11	MEAGHAN M. DRISCOLL	11	Jo-Hanna Read as Guardian Ad Litem
12	Connelly Law Offices	12	of E.T., a Minor and Answers
13	2301 North 30th Street	13	Thereto
14	Tacoma, WA 98403	14	Exhibit 15 Hand-drawn diagram 130
15	253.593.5100	15	
16	mdriscoll@connelly-law.com	16	
17	FOR THE DEFENDANTS:	17	
18	RICHARD B. JOLLEY	18	
19	JEREMY W. CULUMBER	19	
20	Keating, Bucklin & McCormack, Inc., P.S.	20	
21	800 Fifth Avenue, Suite 4141	21	
22	Seattle, WA 98104-3175	22	
23	206.623.8861	23	
24	rjolley@kbmlawyers.com	24	
25	jcumber@kbmlawyers.com	25	
	ALSO PRESENT: Lori Talbott, Legal Videographer, CLVS		
	YOM Full Service Court Reporting		

Page 69

Page 71

1 don't know the details of it at all.  
 2 Q. Did it concern you for Elijah to be in an  
 3 environment where there was conflict between Leonard  
 4 and his girlfriend that resulted in him being stabbed?  
 5 A. She left immediately after -- after that  
 6 incident, they -- they no longer lived together.  
 7 Q. Were you aware that someone had set Leonard's  
 8 car on fire?  
 9 A. I was not aware of that incident at all. I --  
 10 I've been told, but I -- I'm -- I don't -- I'm not  
 11 aware of that incident.  
 12 Q. Did you ever have a concern that Elijah was  
 13 exposed to violence there at the house on 55th Avenue  
 14 in Fife?  
 15 A. No.  
 16 Q. Leonard didn't have a driver's license,  
 17 correct?  
 18 A. Correct.  
 19 Q. How long had it been since Leonard had  
 20 actually been able to drive?  
 21 A. I don't recall.  
 22 Q. How did Leonard get around with Elijah to run  
 23 errands and do things with Elijah?  
 24 A. Myself or my mother would pick him up for  
 25 particular appointments and things like that.

1 was living there?  
 2 MR. FORD: Objection, assumes a fact not  
 3 in evidence.  
 4 MR. JOLLEY: We'll mark this one as --  
 5 are we at 10, 11?  
 6 (Deposition Exhibit 11 was  
 7 marked for identification.)  
 8 Q. (BY MR. JOLLEY) Take a look at Exhibit 11,  
 9 Mrs. Thomas.  
 10 A. (Witness reading document.)  
 11 Q. At some point Mark Patterson was living on  
 12 your property, correct?  
 13 A. Yes.  
 14 Q. And Mark Patterson was a sex offender,  
 15 correct?  
 16 A. Not that I was aware of.  
 17 Q. Had you known that, would you have been  
 18 concerned about him living there, given that Elijah was  
 19 living in the house?  
 20 A. Had --  
 21 MR. FORD: Objection, assumes a fact not  
 22 in evidence. Go ahead.  
 23 MR. JOLLEY: Which fact is not in  
 24 evidence?  
 25 MR. FORD: That he is in fact a sex

Page 70

Page 72

1 Q. And where does your mother live?  
 2 A. She lives in Tacoma as well.  
 3 Q. Do you know who Mark Patterson is?  
 4 A. I believe he had a trailer at the house for a  
 5 period of time.  
 6 Q. When you say he had a trailer at the house,  
 7 what do you mean? Like where was the trailer located?  
 8 A. In the back. There are -- there are two  
 9 driveways at our residence and he had parked one at the  
 10 very back of our property.  
 11 Q. And how did you know Mark Patterson?  
 12 A. I didn't.  
 13 Q. What was your understanding of the  
 14 relationship between Leonard and Mark Patterson?  
 15 A. They were friends.  
 16 MR. JOLLEY: Let's mark this --  
 17 A. Acquaintances -- no, they weren't friends,  
 18 they were acquaintances. He -- he was someone that  
 19 someone else knew and introduced Leonard. They weren't  
 20 close, what I would consider close friends.  
 21 Q. (BY MR. JOLLEY) Did you know that Mark  
 22 Patterson was a sex offender?  
 23 A. I did not.  
 24 Q. Would that have concerned you to know that a  
 25 sex offender was living on your property while Elijah

1 offender. You haven't proven that.  
 2 Q. (BY MR. JOLLEY) Go ahead.  
 3 A. If he had indeed been a sex offender, had I  
 4 been aware that he was a sex offender, he would not  
 5 have been on the property.  
 6 Q. You would agree that knowingly exposing  
 7 your -- a four-year-old to a sex offender is  
 8 unacceptable?  
 9 A. Extremely unacceptable.  
 10 Q. How did you wind up at the house in Fife on  
 11 the day of the incident when Leonard was shot?  
 12 A. He called me.  
 13 Q. And when he called you, what did he say?  
 14 A. He said that he was upset over the death of  
 15 his friend and just maybe if I could come pick up  
 16 Elijah for the night.  
 17 Q. And so when you were talking to him first over  
 18 the phone, did you think he had been drinking?  
 19 A. I did.  
 20 Q. And did that concern you?  
 21 A. Certainly.  
 22 Q. How come?  
 23 A. Because he hadn't drank in such a long time.  
 24 Q. And when you talked to him over the phone did  
 25 he seem to be emotionally distraught?

Page 73

1 A. Emotional.  
 2 Q. And why did you think he was emotional?  
 3 A. Because he just lost his best friend the week  
 4 before.  
 5 Q. It was actually his best friend's brother,  
 6 right?  
 7 A. Yeah, they were all best friends, him and  
 8 Davey, they were all -- they all grew up together, all  
 9 three of them, and they played together, so I won't --  
 10 distinction -- he was closer to Davey than he was to  
 11 Adam, but they were all close.  
 12 Q. Describe what happened when you first got to  
 13 the house.  
 14 A. I walked up and I believe Kim and Leonard were  
 15 sitting in Kim's car and I asked them where Elijah was  
 16 and they said he was in the house and I went after him.  
 17 Q. And was -- was it your understanding that you  
 18 were going over to pick up Elijah that evening?  
 19 A. It was.  
 20 Q. What happened when you went into the house?  
 21 A. I called for Elijah, I believe he was sitting  
 22 down putting on his shoes, and we finished putting on  
 23 his shoes and came back outside.  
 24 Q. And when you came back outside, where was  
 25 Leonard?

Page 74

1 A. I believe him and Kim were standing at the  
 2 bottom of -- of the steps to the kitchen door.  
 3 Q. At some point that evening was -- was there a  
 4 period where Leonard is actually lying on the porch or  
 5 lying on the floor in the living room crying?  
 6 A. No. On the porch, I -- he sat down on the  
 7 porch at -- steps at one point, but we never reentered  
 8 the house.  
 9 Q. Was he actually lying down on the porch  
 10 crying?  
 11 A. No, he was sitting on the porch crying.  
 12 Q. When he was on the porch crying, were you  
 13 concerned about Elijah seeing that?  
 14 A. I was concerned for Leonard. I was concerned  
 15 for Leonard, he was -- he was very sad and -- and  
 16 probably concerned for Elijah, too, to see his dad cry  
 17 because I'm sure that upset him, but I was more  
 18 concerned for Leonard at that point because I knew he  
 19 was really sad.  
 20 Q. So you don't have any recollection of Leonard  
 21 actually lying down on the porch or on the floor in the  
 22 living room crying?  
 23 A. I -- as I said, we did not go in the house.  
 24 Q. Was there ever a discussion between you and  
 25 Leonard that night where you told him, You have to get

Page 75

1 up, you're a grown man, words to that effect?  
 2 A. No, sir. I -- I said to Leonard, You need to  
 3 come with me because I have to work tomorrow. And my  
 4 thought was that I would have him and Elijah spend the  
 5 night at our home and he -- you know, get some sleep  
 6 and then my husband works a night shift and he could  
 7 take them home in the morning.  
 8 Q. And when you said to Leonard, Will you come  
 9 with me or you need to come with me, what was his  
 10 response?  
 11 A. I believe he said, I can't.  
 12 Q. And did you hear Kim tell Leonard words to the  
 13 effect of, You're a grown man, you need to get up?  
 14 A. I don't.  
 15 Q. At some juncture do you recall Leonard saying  
 16 to you, quote, I can't take it anymore?  
 17 A. I do.  
 18 Q. When did that happen?  
 19 A. In that when we were at this -- at the porch  
 20 and -- and while we were standing at the porch, in that  
 21 vicinity I believe.  
 22 Q. When he said, I can't take it anymore, how did  
 23 you interpret that?  
 24 A. Again, that he was very distraught over the  
 25 loss of this friend, it had been very sudden, and he

Page 76

1 had also found out like the -- this is told me the  
 2 night before, that a dog that he had raised from a  
 3 puppy, he actually fed this dog a bottle, had a very  
 4 large tumor, so he was very concerned about that. So  
 5 he had some things he was worried and concerned over  
 6 and upset about.  
 7 Q. How did he know that -- and the dog's name was  
 8 Baxter, correct?  
 9 A. It was, yes.  
 10 Q. How did he know that Baxter had a tumor?  
 11 A. Because it was very large.  
 12 Q. So this was something that -- that Leonard  
 13 could actually see on Baxter's leg?  
 14 A. I -- I'm assuming so, yes.  
 15 Q. And how old was Baxter at the time?  
 16 A. Ten maybe.  
 17 Q. And was it Leonard's belief that -- that  
 18 Baxter was going to die from this tumor?  
 19 A. I'm sure he was very concerned, he -- he was  
 20 extremely attached to Baxter.  
 21 Q. And his friend that had passed away, didn't he  
 22 have some sort of like terminal illness, like a  
 23 disease?  
 24 A. I don't know. I don't know. I know that his  
 25 death was fairly sudden and he was pretty young.

Page 77

Page 79

1 Q. When Leonard said, I can't take it anymore,  
 2 did you think that that meant that he was suicidal?  
 3 A. No.  
 4 Q. Right at that moment when Leonard is saying, I  
 5 can't take it anymore, was he crying as well?  
 6 A. Yes, I believe so.  
 7 Q. At that point, did you believe that Elijah  
 8 needed to be removed from that environment?  
 9 A. No, my concern was that I wanted them both to  
 10 come with me.  
 11 Q. At some point did you put Elijah in your car?  
 12 A. I don't recall putting Elijah in my car.  
 13 Q. At some point were you holding Elijah?  
 14 A. Yeah, I believe I was holding Elijah when we  
 15 came down, you know, or holding his hand, I don't know  
 16 that I was carrying him, but I think I was holding his  
 17 hand.  
 18 Q. Was there any time that night where Leonard  
 19 actually took Elijah from you?  
 20 A. I don't recall.  
 21 Q. Walk me through what happens from the time  
 22 Leonard says, I can't take it anymore, until you call  
 23 911.  
 24 A. Okay. At some point we moved down the  
 25 driveway toward the street, I don't know if that -- I

1 where you're trying to pull Elijah in two, but where  
 2 you're tugging on Elijah and Leonard is holding him?  
 3 A. I would say that's fair.  
 4 Q. Did Leonard think that you were taking Elijah  
 5 away permanently?  
 6 A. I don't know what Leonard was thinking for  
 7 sure, but in retrospect, as I think back on it, I think  
 8 because I had made statements to him that after he had  
 9 gone through treatment that I wanted him to stay clean  
 10 and sober and if he didn't, I might take Elijah from  
 11 him. So I had made that statement to him, so perhaps  
 12 that's what he was thinking.  
 13 Q. And was there any discussion where you said,  
 14 I'm just taking him for the night, or anything like  
 15 that?  
 16 A. No, I just said -- I -- I got exasperated, I  
 17 did. I -- I was tired, I wanted to go home, I wanted  
 18 him to come with me, he wasn't cooperating with us and  
 19 I just said, All right, just -- I'm going to just take  
 20 him. And I think that's when we proceeded from the  
 21 steps down the driveway, but I don't recall exactly the  
 22 sequences.  
 23 Q. Would you describe Leonard's frame of mind  
 24 that night as being rational?  
 25 A. Certainly not, he'd been drinking.

Page 78

Page 80

1 don't recall if that was because we were going to load  
 2 Elijah in my car, I -- I don't remember. And I kept  
 3 trying to encourage Leonard to come with me because  
 4 that was what I wanted, was Leonard to come with me.  
 5 And at some point he did pick Elijah up and I  
 6 know both myself and Kim were saying, Come on, just  
 7 give him to us, you know, give him so I can take him  
 8 home, you know, it's getting late, you know. I -- I  
 9 had to work the next day. Kim actually works -- at  
 10 that time I believe worked a very early, early, early  
 11 morning shift, I think she had to be like to work at  
 12 4:00, so.  
 13 Q. And was Leonard resistant to you taking  
 14 Elijah?  
 15 A. He was.  
 16 Q. Describe for me what he was doing.  
 17 A. He had Elijah in his arms at one point, and  
 18 again, I'm kind of vague on how all that -- how did he  
 19 get him in his arms and how we transpired with each  
 20 other, I don't -- I don't recall all those details.  
 21 But at some point he was just kind of holding him in  
 22 front of him kind of dodging back and forth and I was  
 23 kind of pulling on him and saying, Just -- just give  
 24 Elijah to us.  
 25 Q. Was there an actual sort of tug of war, not

1 Q. But there was no discussion between the two of  
 2 you such as you telling him, I'm just taking him for  
 3 the night, or Leonard asking, Are -- do you -- are you  
 4 trying to take custody of him, anything like that?  
 5 A. No, no.  
 6 Q. Why did you call 911?  
 7 A. Because we were scuffling at the end of the  
 8 driveway and -- and I was trying to get Elijah and I  
 9 became -- I became angry, I -- I got angry and I said,  
 10 If you don't stop this, I'm going to call the police.  
 11 Q. And why did you believe at that moment that  
 12 calling the police would be some sort of option that  
 13 you'd want to exercise?  
 14 A. It's something I really regret, but at that  
 15 point I thought my -- my whole concern in this whole  
 16 thing was that if I left Elijah there, because Leonard  
 17 had not drank in a very long time, that Leonard might  
 18 fall asleep and then Elijah would be left unattended.  
 19 I never ever conceived that or thought that he would  
 20 harm Elijah in any way, my only concern was that he  
 21 might fall asleep.  
 22 Q. And when you said words to the effect of, I'm  
 23 going to call 911 or call the police, what was  
 24 Leonard's response?  
 25 A. He said, Go ahead.



<p style="text-align: right;">Page 81</p> <p>1 Q. And what did you do then?</p> <p>2 A. I stepped over in the neighbor's yard and</p> <p>3 called 911.</p> <p>4 Q. And when you say you stepped over in the</p> <p>5 neighbor's yard, would this be the yard that is</p> <p>6 adjacent to your house as you're going back towards the</p> <p>7 Outpost, in that direction?</p> <p>8 A. Okay. The best way I can describe it is if</p> <p>9 I'm facing the house, the yard is on my right-hand</p> <p>10 side.</p> <p>11 Q. If you're facing the house from where the</p> <p>12 motor home is and the red barn?</p> <p>13 A. Uh-huh.</p> <p>14 Q. Then the yard would be to your right?</p> <p>15 A. Correct.</p> <p>16 Q. Okay.</p> <p>17 MR. JOLLEY: We're going to play the 911</p> <p>18 tape now and I've got a copy for you guys, I'm just --</p> <p>19 what I'm going to do is just play this one and then</p> <p>20 leave it for the court reporter.</p> <p>21 MR. FORD: Okay.</p> <p>22 MR. JOLLEY: Let's see, Meaghan, I think</p> <p>23 I might have two. If not, I can certainly make one</p> <p>24 later, however you guys want to handle it.</p> <p>25 (Discussion off the record.)</p>	<p style="text-align: right;">Page 83</p> <p>1 Q. (BY MR. JOLLEY) And is that your voice</p> <p>2 saying, I need the police?</p> <p>3 A. Yeah.</p> <p>4 Q. And at that point as you're actually on the</p> <p>5 phone, why did you think you needed the police?</p> <p>6 A. I just wanted -- I just wanted to have the</p> <p>7 police come, have them, you know, go up to the door,</p> <p>8 knock on the door, tell him, Hey, Elijah -- or Hey,</p> <p>9 Leonard, you've had a couple things to drink, how about</p> <p>10 we give the grandson to the grandma for the night and</p> <p>11 you sleep it off.</p> <p>12 Q. Prior to -- oh, actually I'll ask you that</p> <p>13 down the road.</p> <p>14 At that point when you are on the 911 tape</p> <p>15 saying, I need the police, it's because you actually</p> <p>16 wanted the police to take Elijah or give Elijah to you</p> <p>17 for the evening, correct?</p> <p>18 A. Correct.</p> <p>19 Q. How would you describe your tone of voice</p> <p>20 right there on the 911 tape?</p> <p>21 A. I sound scared.</p> <p>22 (Audiotape playing.)</p> <p>23 Q. (BY MR. JOLLEY) Let's stop it there. That's</p> <p>24 Leonard's voice on the 911 tape?</p> <p>25 A. It is.</p>
<p style="text-align: right;">Page 82</p> <p>1 Q. (BY MR. JOLLEY) So Ms. Thomas, what I --</p> <p>2 Mrs. Thomas, what I'm going to do is I'm going to play</p> <p>3 a little portion of it and stop and ask you some</p> <p>4 questions, okay?</p> <p>5 A. Yes.</p> <p>6 (Audiotape playing.)</p> <p>7 Q. (BY MR. JOLLEY) First off, can you hear it</p> <p>8 okay?</p> <p>9 A. No, sir, I can't.</p> <p>10 Q. Okay, let's turn it up and we'll start over.</p> <p>11 (Audiotape playing.)</p> <p>12 Q. (BY MR. JOLLEY) Can you hear your voice right</p> <p>13 there?</p> <p>14 A. Uh-huh.</p> <p>15 Q. And you are saying, Get away from me, correct?</p> <p>16 A. I believe so. That sounds like it.</p> <p>17 Q. And so right at that moment what is going on</p> <p>18 when you're saying, Get away from me?</p> <p>19 A. I don't -- I don't recall exactly, I don't</p> <p>20 recall, but I -- at some point -- point I know Leonard</p> <p>21 did come across the lawn in my direction.</p> <p>22 Q. And so you don't recall what's going on at the</p> <p>23 moment that you say, Get away from me?</p> <p>24 A. No.</p> <p>25 (Audiotape playing.)</p>	<p style="text-align: right;">Page 84</p> <p>1 Q. How did Leonard get the phone after you were</p> <p>2 on the 911 call originally?</p> <p>3 A. He took it.</p> <p>4 Q. And how did he take it?</p> <p>5 A. He -- I -- I'm left-handed, I had the phone</p> <p>6 like this (indicating) and I believe he took my hand</p> <p>7 and then removed the phone.</p> <p>8 Q. And did you have some -- first off, what kind</p> <p>9 of phone was it?</p> <p>10 A. I don't -- I -- I think it might -- yeah, it</p> <p>11 was my iPhone, it was my first iPhone, so it was a -- a</p> <p>12 square kind of.</p> <p>13 Q. And did your iPhone have a case on it?</p> <p>14 A. Yeah, it did.</p> <p>15 Q. At some point did the case get broken?</p> <p>16 A. Earlier, earlier I had ahold of the phone</p> <p>17 and -- and -- I don't know how, but the case fell off</p> <p>18 and it -- it fell on the ground and was broken.</p> <p>19 Q. Was the case broken while you and Leonard were</p> <p>20 sort of going back and forth with Elijah?</p> <p>21 A. I believe so, some -- at some point I'm -- but</p> <p>22 I don't even know -- I don't even know why I was</p> <p>23 holding the phone or whatever, but I do recall that the</p> <p>24 case fell off and it -- as soon as it hit the pavement</p> <p>25 it broke.</p>

<p style="text-align: right;">Page 85</p> <p>1 Q. At some point before the phone broke did you 2 have it out to call 911? 3 A. No. 4 Q. Okay. I'm just going to rewind it just a 5 touch and then let it play through a little bit 6 further. 7 (Audiotape playing.) 8 Q. (BY MR. JOLLEY) Did you punch Leonard in the 9 face? 10 A. I did not punch him like with a fist. I -- I 11 believe I hit him a couple times in the face open -- 12 open handed like that (indicating), but I don't believe 13 I punched him. 14 Q. So when Leonard indicated to 911 that you were 15 punching him in the face, that was an exaggeration, 16 correct? 17 A. Correct. 18 Q. And when you hit him, you were hitting him 19 with an open hand? 20 A. To my recollection I was hitting him with an 21 open hand, but I don't recall if I actually hit on him, 22 I just don't remember. I do remember slapping him, 23 though. 24 Q. And Leonard was 6'9"? 25 A. 6'8".</p>	<p style="text-align: right;">Page 87</p> <p>1 shirt? 2 A. No, no, it was just like a -- a finger scratch 3 that had a little bit of blood in it. 4 Q. Nothing particularly gruesome or? 5 A. No, no, no, I'm -- no, nothing I would have 6 even said, Okay, here's a rag, let's press it on and 7 stop the bleeding, nothing like that. 8 Q. Okay. And why were you slapping at Leonard? 9 A. I was just frustrated. I wanted to get him 10 and to get Elijah to get in my car and go home. 11 Q. Was it sort of the idea of like this is, Hey, 12 wake up, leave me alone, what -- describe to me what's 13 going on. 14 A. It was just, Come on, Leonard, let's just go, 15 we need to go, it's late, I need to go to bed, I have 16 to work tomorrow, Kim has to work in a couple hours, 17 you know, let's just stop this, come on, you can come 18 with me and we'll -- you can just go to the house and 19 sleep, you know, sleep downstairs and everything is 20 going to be fine, let's just go. 21 Q. And when you slapped at him, is this before or 22 after he had taken the phone from you? 23 A. That was before. 24 Q. I'm just going to back this up just a little 25 bit, my apologies. See if I can.</p>
<p style="text-align: right;">Page 86</p> <p>1 Q. 6'8"? 2 A. Uh-huh. 3 Q. And how tall are you? 4 A. I'm about 5'5", I believe. 5 Q. And is it -- would it have been a reach for 6 you to actually slap Leonard in the face? 7 A. I wouldn't say a -- a reach necessarily. I 8 mean, I wasn't on my tiptoes like this (indicating) or 9 anything like that, but yeah, I would have had to 10 stretch my hand. 11 Q. Did you -- when you were -- is it fair to say 12 you were slapping at him? 13 A. I was, yeah. 14 Q. When you were slapping at him, were you 15 slapping him in the face? 16 A. I remember hitting him twice in the face, at 17 least twice. 18 Q. And can you say where at on his face? 19 A. Cheek area and I -- I seem to recall that I 20 must have scratched his nose because I -- he was 21 bleeding a little bit, so. 22 Q. When you say he was bleeding a little bit, 23 this is before the police came? 24 A. Yes. 25 Q. And did you see like blood going down onto his</p>	<p style="text-align: right;">Page 88</p> <p>1 (Audiotape playing.) 2 Q. (BY MR. JOLLEY) Do you recall that Leonard 3 telling the 911 operator that his son was in danger? 4 A. I did not hear that conversation. He -- he 5 took the phone from me and ran down the driveway. I'm 6 still in the neighbor's yard, standing in the 7 neighbor's yard, and he ran down the driveway toward 8 the house. 9 Q. And where was Elijah when he ran down the 10 driveway? 11 A. I don't remember. 12 Q. And so -- 13 A. I -- I -- 14 Q. Oh, I'm sorry. 15 A. I'm sorry. At some point he picked Elijah up 16 and had him down at the end of the house, I recall 17 seeing them together, but when exactly he got Elijah, 18 picked him up and took him, I don't remember. 19 Q. I think we're just about at the end of the 20 tape, but let's just listen a little bit longer. 21 (Audiotape playing.) 22 Q. (BY MR. JOLLEY) Let me stop it there. What 23 was going on when Leonard is telling the 911 operator 24 that, She won't let me talk to you guys? 25 A. I don't -- I don't know, I didn't -- I -- I</p>



EXHIBIT 2



EXHIBIT 2



UNITED STATES DISTRICT COURT  
WESTERN OF WASHINGTON  
AT SEATTLE

FREDERICK and ANNALESA THOMAS; )  
and JO-HANNA READ, as Guardian ad )  
Litem of E.T., a minor, )

Plaintiffs, )

v. ) No. 3:15-cv-05346-BJR

JASON CANNON; BRIAN MARKERT; RYAN )  
MICENKO; MICHAEL WILEY; MICHAEL )  
ZARO; CITY OF FIFE; CITY OF )  
LAKEWOOD; and PIERCE COUNTY )  
METRO SWAT TEAM, )

Defendants. )

DEPOSITION UPON ORAL EXAMINATION OF  
KIMBERLY THOMAS

Friday, August 12, 2016  
Tacoma, Washington

VERB8M REPORTING, INC.  
800 Fifth Avenue, #101-122  
Seattle Washington 98104  
Tel: 206/467/0800  
Email: Info@verb8m.net

APPEARANCES:

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EXAMINATION INDEX

EXAMINATION BY: PAGE NO.

MR. CULUMBER 4  
MR. FORD 176

EXHIBIT INDEX

NO. DESCRIPTION PAGE NO.

1 10-page Petition for Dissolution of 40  
Marriage.  
(Remarked on page 41)  
2 1-page color photo of trailer. 86  
3 15 pages Petition for Order of Protection. 92  
4 13 pages Petition for Order of Protection. 97  
5 11 pages color pictures. 108

BE IT REMEMBERED that on Friday,  
August 12, 2016, at 9:00 a.m., at 2301 North 30th  
Street, Tacoma, Washington 98403, before JONI NOVAK,  
CCR, in and for the State of Washington, appeared  
KIMBERLY THOMAS, the witness herein;  
WHEREUPON, the following proceedings  
were had, to wit:

KIMBERLY THOMAS, having been first duly sworn  
by the Court Reporter,  
testified as follows:

EXAMINATION

BY MR. CULUMBER:

Q Good morning, Ms. Thomas.

A Good morning.

Q My name is Jeremy. We met a few minutes ago, but I  
represent the defendants in this case, the cities and  
the police officers.

Do you still go by Thomas?

A Yes.

Q What is your maiden name?

A Jakosalem.

Q J-a-k-o-s-a-l-e-n?

A M.

Page 149

1 they first started arriving, did they talk to Leonard  
 2 through the windows or anything?  
 3 A I don't recall.  
 4 Q So there was a negotiator who was talking to Leonard on  
 5 the phone and out loud?  
 6 A Correct.  
 7 Q What did he look like? You don't remember his name, I  
 8 see?  
 9 A I don't remember his name.  
 10 Q What did he look like?  
 11 A Light brown hair, brown eyes. I want to say he looked  
 12 Hispanic sort of, but it was dark.  
 13 Q What was he saying? What was the conversation like that  
 14 you could hear?  
 15 A It's like can we talk to you. We just want to talk.  
 16 Just want to know what's going on. Here to help. And  
 17 then Leonard replied, get off my property. I don't want  
 18 to talk to you, and kept proceeding that way. I know  
 19 another officer came up and talked to us. I don't know  
 20 who it was. But we told him that there's a dog in  
 21 there, and -- with Elijah and Leonard. So if you hear  
 22 barking, there's a dog. But there's another dog too,  
 23 but she's in the back yard. But Bachelor's in the  
 24 house. And he was like, okay.  
 25 He wrote it on his pad, his little note pad. But I

Page 150

1 don't know who it was. There was so many of 'em. So  
 2 trying to remember faces or names, it just -- it, it  
 3 draws a blank.  
 4 Q So generally you heard police officers saying they want  
 5 to talk to Leonard, and Leonard saying, I don't want to  
 6 talk to you, get off my property?  
 7 A Yes.  
 8 Q You said before that he had an issue with Fife cops in  
 9 particular?  
 10 A Yes.  
 11 Q And that was because of what you heard up at the house.  
 12 A Mmm.  
 13 Q Tell me about that.  
 14 A He told me about the Fife cops are harassing him because  
 15 of Mary.  
 16 Q He told you this before?  
 17 A Yes.  
 18 Q When?  
 19 A The day of telling me about Mary kicking in the door.  
 20 Q So a couple weeks before --  
 21 A Yeah.  
 22 Q -- he got shot, he told you that the Fife cops were  
 23 harassing him?  
 24 A Yeah.  
 25 Q And prior to that, had he ever said anything about Fife

Page 151

1 police in particular?  
 2 A No.  
 3 Q So was there anything about what you heard between the  
 4 police and Leonard that night that made you believe he  
 5 didn't like the Fife police?  
 6 A Can you rephrase that question?  
 7 Q Yes. You believed he didn't like the Fife police  
 8 because he had talked to you about being harassed a  
 9 couple weeks before?  
 10 A Correct.  
 11 Q Anything he said that night? I mean, did you hear him  
 12 say, hey, if you're Fife police, get off my property, or  
 13 I don't like the Fife police, anything that night that  
 14 he expressed?  
 15 A I just know, he says, I don't want to speak to Fife  
 16 police.  
 17 Q You heard him say that when he was --  
 18 A Mm-hmm.  
 19 Q -- inside the house?  
 20 A Mm-hmm.  
 21 Q And he was saying that to police officers who were --  
 22 A Yeah.  
 23 Q -- trying to talk to him?  
 24 A Yes.  
 25 Q Was it just the one time you heard him say that?

Page 152

1 A Yes.  
 2 Q Anything else that you remember that sticks out in your  
 3 mind about interaction between Leonard and the police  
 4 before you got moved down to the Outpost?  
 5 A I remember glass breaking.  
 6 Q Okay.  
 7 A I don't know what the conversation was about between  
 8 Leonard and the police, but I remember hearing glass  
 9 breaking.  
 10 Q Did you ever hear later what that was?  
 11 A No.  
 12 Q Anything else?  
 13 A I remember Leonard and Elijah at the window, top window,  
 14 the bedroom window, and Elijah peeking out and looking  
 15 'cause he sees a lot of cops and saying boo, you know,  
 16 like peak-a-boo.  
 17 Q Yes.  
 18 A Boo, I see you. I hear him saying boo, you know, and  
 19 Leonard saying boo, too, so. I think he was just  
 20 playing, so I didn't think nothing of it.  
 21 Q When you were standing there at the house and police  
 22 were trying to talk to Leonard, were you hoping that  
 23 Leonard would just let Elijah go?  
 24 A Yeah, I was hoping.  
 25 Q Anything else you remember about being there at the

EXHIBIT 3



EXHIBIT 3



<p style="text-align: right;">Page 1</p> <p>1 UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON AT SEATTLE</p> <hr/> <p>3 FREDRICK and ANNALESA THOMAS; ) 4 and JO-HANNA READ, as ) Guardian ad Litem of E.T., a ) 5 minor, ) 6 Plaintiffs, ) 7 vs. ) 3:15-cv-05346 BJR 8 JASON CANNON; BRIAN MARKERT; ) 9 RYAN MICENKO; MICHAEL WILEY; ) 10 MICHAEL ZARO; CITY OF FIFE; ) CITY OF LAKEWOOD; and PIERCE ) COUNTY METRO SWAT TEAM, ) 11 Defendants. )</p> <hr/> <p>13 VIDEOTAPED DEPOSITION UPON ORAL EXAMINATION OF 14 BRAD BLACKBURN 15 VOLUME I</p> <hr/> <p>17 9:08 A.M. 18 JULY 19, 2016 19 801 FIFTH AVENUE, SUITE 4141 20 SEATTLE, WASHINGTON</p> <p>24 REPORTED BY: CINDI ULLMAN, CCR 2687</p>	<p style="text-align: right;">Page 3</p> <p>1 I N D E X</p> <p>2</p> <p>3 EXAMINATION BY: PAGE(S) 4 MR. WHEDBEE 5</p> <p>5 6 7 8 9 10 11</p> <p>12 EXHIBITS FOR IDENTIFICATION PAGE 13 Exhibit 31 05/15/13 Email dated Re: 28 14 Citizen Phone call (D-RFP 000258) 15 Exhibit 32 Detailed Report of Responses 41 16 Exhibit 33 Co-Op Cities Metro Crime Response 42 17 Unit: Interview transcript 18 (Draft) 19 Exhibit 34 Positron Response Summary; 77 20 Incident Detail Reports; Case 21 Supplemental Information 22 Exhibit 35 Audio recording -- 23 (Retained by plaintiffs' counsel.) 24 25</p>
<p style="text-align: right;">Page 2</p> <p>1 A P P E A R A N C E S</p> <p>2</p> <p>3 FOR THE PLAINTIFFS THOMAS: 4 DAVID J. WHEDBEE TIMOTHY K. FORD 5 MacDonald Hoague &amp; Bayless 705 Second Avenue, Suite 1500 6 Seattle, WA 98104 206.622.1604 7 davidw@mhb.com timf@mhb.com</p> <p>8 9</p> <p>10 FOR THE DEFENDANTS: 11 JEREMY W. CULUMBER Keating, Bucklin &amp; McCormack, Inc., P.S. 12 800 Fifth Avenue, Suite 4141 Seattle, WA 98104 206.623.8861 13 jculumber@kbmlawyers.com</p> <p>14 15</p> <p>16 ALSO PRESENT: 17 MEAGHAN M. DRISCOLL, Connelly Law Offices 18 ALBERT MAIMON, Legal Videographer, CLVS Maimon Legal Video</p> <p>19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 4</p> <p>1 SEATTLE, WASHINGTON; JULY 19, 2016 2 9:08 A.M. 3 --oOo- 4</p> <p>5 THE VIDEOGRAPHER: Good morning. We're 6 now on the record. 7 Today's date is July 19th, 2016. The time on 8 the video monitor is 9:08 a.m. My name is Albert 9 Maimon, Certified Legal Videographer, from Maimon Legal 10 Videography, here with Cindi Ullman, your court 11 reporter, representing Yamaguchi Obien Mangio with 12 offices in Seattle. 13 This is a video-recorded deposition of Brad 14 Blackburn, in the matter of Fredrick and Annalesa 15 Thomas, et al., vs. Jason Cannon, et al., filed in the 16 United States District Court Western District of 17 Washington at Seattle, Cause Number 3:15-cv-05346 BJR. 18 This deposition is -- deposition is noticed by counsel 19 for the plaintiff. Our location today is 800 Fifth 20 Avenue, Suite 4141, Seattle, Washington 98104. 21 Will counsel please identify yourselves, 22 stating whom you represent, after which the court 23 reporter will swear in the witness and we will proceed. 24 MR. WHEDBEE: David Whedbee, on behalf 25 of plaintiffs Fred, Annalesa, and Elijah Thomas.</p>

Page 73

1 internally?  
2 A. I don't recall that part. I recall  
3 specifically seeing it on the memo board in dispatch.  
4 Q. But again, after the shooting.  
5 A. Correct. No, that's not correct. I saw it  
6 before the shooting, but I didn't put the two and two  
7 together till after the shooting.  
8 Q. When did -- how do you know that you saw it  
9 before the shooting?  
10 A. Because after the shooting I was able to put  
11 two and two together.  
12 Q. Were you the person that authorized the SWAT  
13 response?  
14 A. Authorized? Yeah. The chief of police is the  
15 only one that can activate the SWAT team.  
16 Q. Was part of your SWAT authorization the fact  
17 that there had been this officer safety alert regarding  
18 the purported ability of Mr. Thomas to pull Taser  
19 probes out of his body?  
20 A. No.  
21 Q. When you brought up that issue about the Taser  
22 probe, I had been asking you whether Mr. Thomas had  
23 mentioned any weapons or made any threats in the two  
24 phone conversations that you had. Did anything about  
25 the Taser probes come up --

Page 74

1 A. No.  
2 Q. -- in those phone conversations?  
3 A. No.  
4 Q. Did you put two and two together about the  
5 Taser probes because of conversations you had with  
6 Lieutenant Thompson?  
7 A. I could have. After the scenario and after  
8 the shooting, he may have brought that up as they were  
9 speaking, and then I would -- then I would say, Okay.  
10 That's the guy I read about in dispatch.  
11 Q. Describe for me the process by which an  
12 officer enters an officer safety alert in the Positron  
13 system. Is that the internal one?  
14 A. The City of Fife one?  
15 Q. Yeah.  
16 A. Mm-hm.  
17 Q. Describe for me that process.  
18 A. The officer or the dispatcher would take  
19 information. They would attach it to the subject,  
20 whether -- they could be a victim; they could be a -- a  
21 subject; they could be just for information. And they  
22 could enter him into the system and they would flag him  
23 with different codes, like a -- they would -- an  
24 example would be dispatch gets a new registered sex  
25 offender in the city. They would get that information.

Page 75

1 They would enter it into the system for information --  
2 the case number, the court they're from -- and then  
3 they would flag them as a sex offender.  
4 It's changed over the years, but there's a --  
5 there's a code they'd put in for that. So when you run  
6 that person's name, that would pop up and tell you that  
7 you had a sex offender, a registered sex offender that  
8 you were speaking with.  
9 Q. Okay. And with respect to the -- is that  
10 different than officer safety alerts, or...?  
11 A. It's the same system.  
12 Q. Okay. And I'm talking about off- -- officer  
13 safety alerts now.  
14 A. It's the same system. It's the same thing.  
15 So it could be -- say, a subject was arrested with  
16 guns. They would go in and they could flag him "A" for  
17 armed. You'd bring them up. This little cue comes up.  
18 It's a red flashing light. They'd click on it, and it  
19 tells you what the flag is. So it could be safety. We  
20 used to -- I mean, pre-HIPAA, needles were a big  
21 concern.  
22 We also have it in there -- the system was set  
23 up so if the power went out at this house and you type  
24 in the person's name, if we had a medical situation  
25 like with no power, they needed a generator for a key

Page 76

1 to house this machine, then that would come up and then  
2 they could get resources to them. So it's a general  
3 program.  
4 Q. With respect to officer safety, what are the  
5 different codes that you had in 2013?  
6 A. I can remember a few of them, but not all of  
7 them.  
8 Q. What --  
9 A. You could get a printout from this system.  
10 It'll give it to you.  
11 Q. What -- what could you remember?  
12 A. We had armed, D for drug user. It was Z for  
13 sex offender. Uncooperative was U. There was R for  
14 resists arrest. There's a couple other ones in there.  
15 T for theft.  
16 Q. Okay.  
17 A. I don't remember the specific wordings, but  
18 those are the -- the general categories.  
19 Q. So A for armed, U for uncooperative?  
20 A. Uh-huh. R would be like for resists arrest.  
21 Q. There's a drop-down box, and there was --  
22 there's a list of preset words in there.  
23 MR. WHEDBEE: Just see if we can get  
24 somewhere with this.  
25 Mark this as Exhibit 33 or -4 maybe.

<p style="text-align: right;">Page 109</p> <p>1 MR. WHEDBEE: Why don't we take a short 2 lunch break right now. 3 THE WITNESS: Okay. 4 MR. WHEDBEE: And then maybe resume 5 at -- you know, the sooner, the better. 6 THE VIDEOGRAPHER: The time is 12:02 7 p.m. We're off the record. 8 (Deposition was recessed at 12:02 p.m., 9 to be reconvened at 12:30 p.m.) 10 11 12 AFTERNOON SESSION 13 --oOo-- 14 12:49 P.M. 15 16 THE VIDEOGRAPHER: The time is 12:49 17 p.m. We're on the record. 18 19 EXAMINATION RESUMED 20 BY MR. WHEDBEE: 21 Q. Chief Blackburn, can you tell me how you first 22 heard about an incident unfolding at the home of 23 Leonard Thomas? 24 A. Yeah. I was off-duty. I was at home, and 25 Scott Green called me to advise me.</p>	<p style="text-align: right;">Page 111</p> <p>1 authorize SWAT, or was he -- was it an open-ended 2 request? 3 A. What does that mean? 4 Q. Do you believe that Lieutenant Green -- well, 5 scratch that. 6 How -- how did Lieutenant Green -- Green 7 phrase his request for SWAT? 8 A. Based on what I remember, what I just said. 9 Q. Well, did he call and say, This is the 10 situation we got going on out here; what should we do? 11 Or did he say, This is a situation going on out here. 12 I would like to call in SWAT; will you authorize it? 13 A. Partially, yeah. 14 Q. So how did he -- can you tell me -- 15 A. So he told me the situation and that he needed 16 SWAT. 17 Q. So he said he needed SWAT. 18 A. SWAT to be called. 19 Q. Okay. And how -- how long was that 20 conversation? 21 A. Pretty short. 22 Q. Okay. 23 A. From what I remember. 24 Q. And so what you've told me here -- barricaded 25 subject, child involved, DV incident -- is there any</p>
<p style="text-align: right;">Page 110</p> <p>1 Q. And what -- what -- what did -- and Scott 2 Green, he's a lieutenant? 3 A. Correct -- he was at the time. 4 Q. Okay. And what did -- what did Lieutenant 5 Green say? 6 A. He had a brie- -- gave a brief recap of the 7 situation and that he needed a SWAT team. 8 Q. What -- what did he say in his recap? 9 A. If I remember correctly, he needed -- he was 10 at a DV call and he had a barricaded subject or a 11 situation. 12 Q. Did he mention anything else? 13 A. There was a child involved. That's all I 14 remember. 15 Q. Did he -- did he describe any interactions 16 between the barricaded subject and the child? 17 A. No. 18 Q. Did -- in the DV call, what did he say about 19 that? 20 A. You know, I just remember him saying that 21 there's a DV call, he had a barricaded subject and he 22 had a child with him. 23 Q. Any other information? 24 A. Not that I recall. 25 Q. And did he affirmatively request that you</p>	<p style="text-align: right;">Page 112</p> <p>1 other information that Lieutenant Green conveyed to you 2 before you authorized SWAT to respond? 3 A. Not that I recall offhand. 4 Q. Then what did you do? 5 A. Then I -- I called Zaro -- he is the team 6 commander -- and briefly told him what -- what 7 situation we had. 8 Q. And what did you say to Zaro? 9 A. Pretty much the same information, yeah, what I 10 had. 11 Q. And what did Commander Zaro say back to you? 12 A. That he was going to activate the team and 13 that he wanted to know a location for a rally point, or 14 a meeting point. 15 Q. Did anyone mention who the DV victim was when 16 SWAT was activated? 17 A. I don't recall specifically. It could be in 18 that statement there (indicating). 19 (Mr. Ford entered the room.) 20 Q. (BY MR. WHEDBEE) Well, here you say on page 21 7, line 33 (as read): "He told me, let me see if I 22 have a phone flyer. He, ah, he had told me 23 specifically they had a DV call with a barricaded 24 subject and he needed a SWAT team." 25 What -- what is a phone flyer?</p>

EXHIBIT 4



EXHIBIT 4





UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

FREDRICK and ANNALESA THOMAS; )  
and JO-HANNA READ, as )  
Guardian ad Litem of E.T., a )  
minor, )

Plaintiffs, )

vs. )

3:15-cv-05346 BJR

JASON CANNON; BRIAN MARKERT; )  
RYAN MICENKO; MICHAEL WILEY; )  
MICHAEL ZARO; CITY OF FIFE; )  
CITY OF LAKEWOOD; and PIERCE )  
COUNTY METRO SWAT TEAM, )

Defendants. )



VIDEOTAPED DEPOSITION UPON ORAL EXAMINATION OF  
MICHAEL A. ZARO  
VOLUME I

9:11 A.M.

JUNE 30, 2016

9401 LAKEWOOD DRIVE SOUTHWEST

LAKEWOOD, WASHINGTON

REPORTED BY: CINDI ULLMAN, CCR 2687



<p style="text-align: right;">Page 106</p> <p>1 Q. (BY MR. FORD) Do you know one Officer Zach</p> <p>2 Kenyon?</p> <p>3 A. Yes.</p> <p>4 Q. And what --</p> <p>5 A. He was --</p> <p>6 Q. -- department does he work for?</p> <p>7 A. Right now? I think he's -- I think he just</p> <p>8 got hired by Puyallup from Bonney Lake, but he went</p> <p>9 from Milton to Bonney Lake. And at one time he was a</p> <p>10 sniper for the team -- oh, in fact, I guess, yeah, he</p> <p>11 was with Markert over on the -- on the 1 position,</p> <p>12 so... So he had to have still been with Milton because</p> <p>13 when he went to Bonney Lake he was no longer on the</p> <p>14 team.</p> <p>15 (Mr. Ford and Mr. Whedbee confer.)</p> <p>16 MR. FORD: Oh, sorry. Okay, thanks.</p> <p>17 Q. (BY MR. FORD) To your knowledge, did anybody</p> <p>18 ever tell Leonard Thomas he was under arrest?</p> <p>19 A. I don't remember if those exact words were</p> <p>20 used.</p> <p>21 Q. Okay. Let's take a look at your Exhibit 27,</p> <p>22 please?</p> <p>23 A. Okay.</p> <p>24 Q. So you -- you received a call from Chief</p> <p>25 Blackburn at the beginning of this incident; is that</p>	<p style="text-align: right;">Page 108</p> <p>1 A. I don't remember if that came up or not.</p> <p>2 Q. Do you know if he was the custodial parent?</p> <p>3 A. No.</p> <p>4 Q. You don't know?</p> <p>5 A. No. I don't remember.</p> <p>6 Q. Where were you when you received the call from</p> <p>7 Chief Blackburn?</p> <p>8 A. At home.</p> <p>9 Q. Which -- what part of the area is that?</p> <p>10 A. Puyallup.</p> <p>11 Q. When you arrived, had -- was the command</p> <p>12 center already present?</p> <p>13 A. I don't remember if it was or not.</p> <p>14 Q. There's -- were two vehicles brought there,</p> <p>15 one of which has been referred to as the "AT" and the</p> <p>16 other one has been referred to as the "BearCat." Do</p> <p>17 you remember that?</p> <p>18 A. They were brought. I don't remember when.</p> <p>19 Q. Who decides to bring -- whose decision would</p> <p>20 it be to bring those vehicles?</p> <p>21 A. It's -- if the team gets called out, they get</p> <p>22 brought.</p> <p>23 Q. Do you remember ever having any conversation</p> <p>24 with anybody about whether one of those vehicles would</p> <p>25 be driven into the backyard of the house that Leonard</p>
<p style="text-align: right;">Page 107</p> <p>1 right?</p> <p>2 A. Yes.</p> <p>3 Q. And there's some mention in here -- I'm not</p> <p>4 sure where it is -- of whether there are -- the</p> <p>5 incident met the criteria for a SWAT callout. Where</p> <p>6 are the criteria that are used to determine whether a</p> <p>7 SWAT callout is appropriate?</p> <p>8 A. Did you say where or what?</p> <p>9 Q. Where would one find one, or find those? Are</p> <p>10 they written down somewhere?</p> <p>11 A. They might be in the MOS, I'm not sure. But</p> <p>12 generally what we look at is: Is the suspect armed?</p> <p>13 Is he barricaded? Is there a PC for arrest? Is there</p> <p>14 a hostage? Maybe the capabilities of the agency that's</p> <p>15 calling to ask. Those are all factors. The -- the</p> <p>16 suspect's criminal history. I think I said whether or</p> <p>17 not he's armed. If there's other -- you know, other</p> <p>18 suspects around? What the environment's like, if it's,</p> <p>19 you know, a -- a compound where it's hard to get into</p> <p>20 safely, that -- those are all factors that would be</p> <p>21 taken into consideration.</p> <p>22 Q. Did you have any information during the course</p> <p>23 of the evening as to whether Leonard Thomas was the</p> <p>24 natural parent of Elijah Thomas, the boy that was with</p> <p>25 him?</p>	<p style="text-align: right;">Page 109</p> <p>1 Thomas was in?</p> <p>2 A. I don't.</p> <p>3 Q. Did you know that that was Leonard Thomas's</p> <p>4 residence?</p> <p>5 A. Yes.</p> <p>6 Q. Did you know that it was his son's residence</p> <p>7 as well?</p> <p>8 A. I don't remember if -- again, you asked the</p> <p>9 question about if I knew about the custodial status of</p> <p>10 the son, and I don't remember.</p> <p>11 Q. Was that not a factor in your determination of</p> <p>12 whether it was appropriate to use SWAT tactics to bring</p> <p>13 the son out of the house away from the father?</p> <p>14 A. No.</p> <p>15 Q. Why not?</p> <p>16 A. Because the father had already hung the son</p> <p>17 out the window with -- you know, endangering the child</p> <p>18 and essentially assaulting the child, and we wanted --</p> <p>19 need to make sure the child was safe. Whether the --</p> <p>20 it's the custodial parent or a complete stranger, if</p> <p>21 they're threatening the -- the safety and life of that</p> <p>22 child, we need to make sure that child's safe.</p> <p>23 Q. Did Leonard Thomas ever threaten the safety or</p> <p>24 life of his child while you were present?</p> <p>25 A. While I was present? Well, when I was on</p>



<p style="text-align: right;">Page 37</p> <p>1 I don't -- I think that there's a difference between  2 placing the charge and setting the charge, which is  3 essentially arming it.  4 Q. So setting it would be arming it?  5 A. You would need to ask one of the explosive  6 breachers on that.  7 Q. Well, in overhearing this, though, do you --  8 when you hear the charge being set, does that mean it's  9 going to go off now unless somebody does something --  10 A. No, no, no --  11 Q. -- to stop it?  12 A. -- nope.  13 Q. It's just ready to be --  14 A. No, it's just ready.  15 Q. Okay.  16 [Audio recording played.]  17 Q. (BY MR. FORD) Could you tell what he said  18 there? A door's open. The -- what is coming out  19 again?  20 A. I couldn't hear.  21 Q. Could -- could you tell whose voice that was?  22 A. No.  23 [Audio recording played.]  24 Q. (BY MR. FORD) Was that Wiley or was that  25 Markert that said, Door's open. It looks like he's</p>	<p style="text-align: right;">Page 39</p> <p>1 Q. And at that time you gave a command to explode  2 the back door and enter with the Go team from back  3 there; is that right?  4 A. To breach the back door, yes.  5 [Audio recording played.]  6 Q. (BY MR. FORD) Were you able to hear that when  7 it occurred?  8 A. Yes.  9 Q. Did you hear the shots?  10 A. Yes.  11 Q. Did you hear the sniper shot?  12 A. Yes.  13 Q. Can you distinguish between a sniper shot and  14 -- and other forms of munition?  15 A. Well, I can distinguish the -- the difference  16 between a 308 rifle and a 223, yes.  17 Q. Was the door to the command vehicle open?  18 A. I don't -- at that time, I don't remember.  19 Q. But you could hear -- could you hear the  20 explosion?  21 A. Oh, yes.  22 Q. Is there any soundproofing in that command  23 vehicle?  24 A. No. It's no different than an RV.  25 Q. So did something happen after you had the</p>
<p style="text-align: right;">Page 38</p> <p>1 moving some kind of pole or something behind the door?  2 A. I couldn't tell.  3 Q. Okay.  4 [Audio recording played.]  5 Q. (BY MR. FORD) That was you.  6 A. Yes.  7 Q. And you wanted to have somebody have grandma  8 call to Elijah?  9 A. Right.  10 [Audio recording played.]  11 Q. (BY MR. FORD) And that was you, Command to  12 Wiley, launch on the back door -- at your command? Is  13 that what that said?  14 A. It's what I heard.  15 Q. And "launch" means set off the explosion?  16 A. Yes.  17 Q. So you were aware at that time that Elijah  18 Thomas was sitting on the porch; is that right?  19 A. Right.  20 Q. And that Leonard Thomas was in the doorway in  21 some respect; is that right?  22 A. Right.  23 Q. And that the grandmother was speaking to  24 Elijah; is that right?  25 A. Yes.</p>	<p style="text-align: right;">Page 40</p> <p>1 grandma call to Elijah that caused you to give a  2 command to launch on the back door on Wiley's command?  3 A. What do you mean, "did something happen"?  4 Q. Yes. Did something happen that caused you to  5 make the decision to give the command to launch?  6 A. We had the opportunity. We had the separation  7 and the -- the... What didn't happen was that the  8 child was not going to grandma and that we were not  9 able to recover him and we had more separation than  10 we'd had before from Elijah and Leonard Thomas.  11 Q. How did you know that the -- that Elijah was  12 not going to grandma?  13 A. Because I was not given that -- because they  14 would have said that the child was going to grandma.  15 Q. So you didn't have any source of information  16 about what was going on at the time you gave the  17 command to launch on the back door at Wiley's command  18 other than what was coming in over this radio; is that  19 right?  20 A. Correct.  21 Q. And do you remember if Leonard Thomas was  22 still speaking with the negotiator while this was  23 occurring?  24 A. I don't remember.  25 Q. Did Leonard Thomas ever make any statement</p>

EXHIBIT 5



EXHIBIT 5



IN	NAME	Department	out
6484	B. Johns	Lakeview	1027
0434	Hall	Lakeview	0506
0434	253	Fife PD	0450
0434	250	Fife PD	0507
0438	Therckauf	Puyallup PD	1010
0451	(M.E.) BARR	ME 14 - MED. EX.	
0500	MALAVE	FIFE P.D.	0508
0511	GOW	FIFE P.D.	1026
0536	MALAVE	FIFE P.D.	1010
0543	RACKLEY	FIFE P.D.	1027
0651	MELZO	PUYALLUP P.D.	0938
0651	OBERMILLER	PUYALLUP P.D.	0938
0752	STRINGFELLOW	FIFE P.D.	1022
0803	BOB THOMPSON	PUYALLUP P.D.	0958
0810	BLACKBURN	FIFE P.D.	0814
0810	MEARS	FIFE P.D.	0815
0820	T. THOMPSON	FIFE P.D.	1010
0835	BLACKBURN	FIFE P.D.	0905
0855	W. SMITH	SUMNER ANIMAL	0926
0922	S. SCOTT	CONTROL BONNEY LK P.D.	0930
0953	B. KOCHER	BONNEY LK P.D.	1021
0952	T. NICOLAIE	SUMNER P.D.	1021
0948	K. BARNES	P.C. PROS. INVS.	0938



218 55<sup>th</sup> Ave East

3/24/2013

IN	Name	PD	Out
306	Rackley #244	Fife PD	310
308	Wiley	Lakewood PD	339
308	Zaro	Lakewood PD	317
311	Rackley #244	<del>Lakewood PD</del> <sup>Fife PD</sup> (116)	315
313	Brian Johnson	Lakewood PD	325
317	Porche	Lakewood PD	328
317	Rodriguez	Steilacoom	317
	Malave #259	Fife PD	318
	Thompson #253	Fife PD	318
319	Thompson #253	Fife PD	325
320	Rackley #244	Fife PD	351
320	Gow #280	Fife PD	354
320	Rodriguez	Steilacoom PD	337
321	Malave #259	Fife PD	325
324	Gow #280	Fife PD	350
	Watson	Summer PD	328
	Waller	Lakewood PD	328
	Riber Reiber	Puyallup PD	328
	Wilson	Puyallup PD	329
330	Malave #259	Fife PD	343
330	Thompson #253	Fife PD	0421
	Vance	Bonney lake PD	333
	Massey	Puyallup PD	333
	SIVankeo	Lakewood PD	333
	Cannon	Lakewood PD	339
	William	Central Pierce Fire	337

TN

Name

PD

AC Faleno

Bonney Lake PD

Temple

Puyallup PD

Micenko (10-10)

Fife PD

338

Brian Johnson

Lakewood PD

Derige

Steilacoom PD

~~Kenyon~~ #740

Milton PD

Maker

Lakewood PD

355

Rackley # 244

Fife PD

400

Eakes

Lakewood PD

0414

Thompson # 253

Fife PD

~~0414~~

0425

Stringfellow #229

Fife PD

EXHIBIT 6



EXHIBIT 6





<p style="text-align: right;">Page 1</p> <p>1 UNITED STATES DISTRICT COURT 2 WESTERN DISTRICT OF WASHINGTON AT SEATTLE 3 4 _____ 5 ) 6 FREDRICK and ANNALESA THOMAS; ) and JO-HANNA READ, as Guardian ) 7 ad Litem of E.T., a minor, ) 8 ) 9 Plaintiffs, ) 10 ) 11 vs. ) 3:15-cv-05346 BJR 12 ) 13 JASON CANNON; BRIAN MARKERT; ) RYAN MICENKO; MICHAEL WILEY; ) 14 MICHAEL ZARO; CITY OF FIFE; ) CITY OF LAKEWOOD; and PIERCE ) 15 COUNTY METRO SWAT TEAM, ) 16 ) 17 Defendants. ) 18 19 DEPOSITION UPON ORAL EXAMINATION OF 20 RYAN MICENKO 21 22 10:11 A.M. 23 MARCH 29, 2016 24 3737 PACIFIC HIGHWAY EAST 25 FIFE, WASHINGTON</p> <p>26 REPORTED BY: SHARI L. WHEELER, CCR NO. 2396</p>	<p style="text-align: right;">Page 3</p> <p>1 I N D E X 2 3 EXAMINATION BY: PAGE 4 MR. WHEDBEE 4 5 6 7 EXHIBITS FOR IDENTIFICATION PAGE 8 (Exhibits 1 through 5 were previously marked.) 9 Exhibit 6 Hand-drawn map 45 10 Exhibit 7 Google Earth aerial photo 47 11 Exhibit 8 Picture of armored vehicle 75 12 Exhibit 9 Picture showing the backside of 76 13 the house and armored vehicle 14 15 EXHIBITS PREVIOUSLY MARKED AND REFERRED TO 16 Exhibit 2 Metro SWAT Channel radio traffic, 73 17 date of 5-29-2013 18 Exhibit 3 Fife Police Department Incident 56, 63 19 Reports and Case Supplemental 20 Information 21 22 23 24 25</p>
<p style="text-align: right;">Page 2</p> <p>1 A P P E A R A N C E S 2 3 FOR THE PLAINTIFFS: 4 DAVID J. WHEDBEE TIMOTHY K. FORD 5 MacDonald Hoague &amp; Bayless 705 Second Avenue, Suite 1500 6 Seattle, Washington 98104 206.622.1604 7 davidw@mhb.com timf@mhb.com 8 9 FOR THE DEPONENT: 10 JEREMY W. CULUMBER Keating, Bucklin &amp; McCormack, Inc. P.S. 11 800 Fifth Avenue, Suite 4141 Seattle, Washington 98104 12 206.623.8861 jculumber@kbmlawyers.com 13 14 FOR DEFENDANT CITY OF FIFE: 15 F. HUNTER MACDONALD VSI Law Group, PLLC 16 225 Tacoma Avenue South Tacoma, Washington 98402 17 253.922.5464 hunter@vsilawgroup.com 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 4</p> <p>1 FIFE, WASHINGTON; MARCH 29, 2016 2 10:11 A.M. 3 --oOo-- 4 5 RYAN MICENKO, 6 sworn as a witness by the Certified Court Reporter, 7 testified as follows: 8 9 EXAMINATION 10 BY MR. WHEDBEE: 11 Q. Officer Micenko, thank you for coming this 12 morning. My name is David Whedbee. We met before. I 13 represent Fred and Annalesa Thomas in this matter. 14 Your counsel, Mr. Culumber, may have gone over 15 some ground rules to the deposition. But I would just 16 like to go over those, also. And then if you have any 17 questions, you can ask me. 18 As you can imagine, I'm going to ask you a 19 series of questions. If you can let me finish each 20 question that I ask before you answer, that would be 21 helpful to preserve a clear record. And likewise, when 22 you're responding, I'll try not to interrupt you with 23 follow-up questions before you've had a chance to fully 24 respond. 25 Defense counsel may object during the course of</p>

<p style="text-align: right;">Page 65</p> <p>1 on the phone, and he was continuing to refuse to exit  2 the house or allow his child to come out of the house.  3 Did you hear about any other -- did you hear  4 about specific plans to have the child come out of the  5 house --  6 A. No.  7 Q. -- among this information?  8 A. No.  9 Q. Okay. Then skip down a couple of paragraphs.  10 It says: I waited at the west side of the house on  11 containment until relieved by SWAT team members.  12 Do you see that?  13 A. Yes, sir.  14 Q. Tell me about the transition from you acting as  15 a Fife patrol officer to acting as a Pierce Metro SWAT  16 officer.  17 A. So I was moved away from the northwest corner  18 because they wanted us to kind of back off. So I went  19 back to Sergeant Green. Sergeant Green and I had a  20 quick discussion about the areas of the house that  21 still needed containment and --  22 Q. Can I stop you?  23 A. Yes, please.  24 Q. When you talked to Sergeant -- Lieutenant  25 Green --</p>	<p style="text-align: right;">Page 67</p> <p>1 Q. So Cannon and Wiley, did you give them any  2 intel, for lack of a better word, about what you had  3 gathered?  4 A. No. Not that I remember. Because they  5 would've gotten it all from the sergeant on scene or  6 Lieutenant Green at the time. They would have gotten  7 it all from the on-scene commander. We might have had  8 a brief conversation verifying that they had what I  9 had, but nothing that I recall directly.  10 Q. Okay. You're transitioning to SWAT. How were  11 you dressed when you had gone out as a patrol officer?  12 A. In our standard patrol uniform. It's  13 essentially a jumpsuit with patches on it with standard  14 duty equipment.  15 Q. We had one of your colleagues here yesterday  16 who had a tie on and things like that. It was not  17 that?  18 A. That was probably our Class A uniform. It's  19 very similar, but not that formal of a uniform.  20 Q. Okay. Did you have a helmet on?  21 A. As patrol?  22 Q. Yes.  23 A. No.  24 Q. How are the markings on the jumpsuit?  25 A. On the jumpsuit, you have, essentially, a -- I</p>
<p style="text-align: right;">Page 66</p> <p>1 A. Sorry. Lieutenant.  2 Q. Yeah, whatever. Did you convey to him any  3 information that you had gathered while on containment?  4 A. Not that I remember.  5 Q. Okay. Carry on, please.  6 A. So then I was moved to the west side of the  7 house. I was still in patrol uniform at this point.  8 But SWAT members were beginning to arrive. A couple of  9 them came up. We had a brief conversation about what  10 they needed me to do, and they relieved me on the  11 containment. I go back to my car, which is where all  12 of our SWAT equipment is stored, and basically changed  13 into the SWAT uniform.  14 Q. Which particular SWAT officers did you speak  15 with?  16 A. You know, they were behind me because I was  17 watching the house. I believe it was Wiley and Cannon.  18 Q. Matt Cannon or Jason Cannon?  19 A. Jason Cannon. There shouldn't be a Matt  20 Cannon. Maybe you're thinking of Matt Watson. There's  21 a couple of Matts.  22 Q. Sorry.  23 A. No, that's okay.  24 Q. So I can cross Matt Cannon off my list.  25 A. There you go. One less deposition.</p>	<p style="text-align: right;">Page 68</p> <p>1 wear a cloth badge. Some guys wear metal badges. You  2 have a badge. You have a name tag. You have two  3 shoulder patches. And then we all have pack panels  4 that say Fife Police or Police.  5 Q. Did you have a Kevlar vest on or anything like  6 that?  7 A. I have a concealed vest on underneath.  8 Q. Underneath?  9 A. Yes.  10 Q. All right. Then when you switch out to SWAT,  11 what do you put on?  12 A. In this case, I'm going to leave my patrol  13 uniform -- we have green SWAT uniforms that look very  14 similar. But in this case, I'm not going to strip down  15 to unders and put that on. So I just, essentially -- I  16 strip off my concealed vest. I take off my patrol duty  17 belt, and my SWAT belt goes on, which is very similar  18 in nature. It just doesn't have the same types of  19 equipment. And then I wear a vest on the outside that  20 has, essentially, additional ballistic protection. We  21 wear a headset to wire into our radio and a helmet.  22 Q. What's on your belt?  23 A. A handgun, magazines, a gas mask. There's,  24 like, a -- we call it a "dump pouch." It's,  25 essentially, like a pouch that you can put whatever you</p>

Page 69

1 want in there. And I carry my medical kit on my pouch.

2 Q. Administratively, is there a change? Are you

3 being paid at a higher rate when you do that?

4 A. If you are a member of Metro SWAT, I receive

5 2 percent specialty pay for the entire month,

6 essentially. So I get a 2 percent raise while assigned

7 to the team. There's nothing for when I go -- it's

8 just my normal wage. If it's overtime, it's overtime.

9 If it's regular time, it's regular time.

10 Q. So it's not like there's an increase in your

11 hourly rate or something like that as soon as you put

12 the SWAT uniform on?

13 A. No. It's associated with my membership to the

14 team for the pay period.

15 Q. So who did you start taking orders from at this

16 point, after you became -- when you were in your SWAT

17 gear?

18 A. I went back to the west side of the house. And

19 I believe Cannon was the team leader on that side of

20 the house -- Jason Cannon.

21 Q. And were there team leaders assigned to each

22 side of the house?

23 A. Yes. Usually it's -- it's not necessarily

24 dictated by the side of the house. But whatever your

25 assignment is, there's separate teams doing separate

Page 70

1 things. There's an assistant team leader assigned to

2 each of those.

3 Q. And thinking back to that night, what was the

4 chain of command for you?

5 A. As SWAT?

6 Q. Yeah. Sort of going up the chain, who were the

7 people that you --

8 A. It would've been Jason Cannon in the back; Mike

9 Wiley, who is the team leader; and then it goes up

10 to -- that night, I believe Mike Zaro was the SWAT

11 admin commander.

12 Q. Is there an incident commander, too?

13 A. That would've been Zaro or whoever the Fife rep

14 was there. I think it was Brad Blackburn, I believe.

15 Q. Is that the chief of police?

16 A. Yes.

17 Q. Or was at the time?

18 A. Yeah, was at the time.

19 Q. When did Chief Blackburn come on the scene?

20 A. I have no clue. That would be in these

21 records. We can look.

22 Q. So from your perspective, who was the highest

23 authority on scene?

24 A. It would've been Chief Blackburn. The person

25 with the highest authority that I have direct

Page 71

1 communication with, if I want, would've been Mike Zaro.

2 Q. Okay. And you go up the chain as far as you

3 need to? First, you go to Cannon. Then you go to

4 Wiley, if you need to?

5 A. Yes. It's rare that I have any conversation

6 above the -- as the individual operator, it's rare that

7 you're going to have any conversation above you and

8 your assistant team leader. Occasionally, I'll

9 communicate with Wiley.

10 Q. When you were still a Fife patrol officer that

11 night, you had the radio here on your shoulder?

12 A. I wear it right at the center of my chest, but

13 yes.

14 Q. When you switched into your SWAT gear, did you

15 start using different coms?

16 A. Yes. We use the same radio. We change

17 channels. And the radio goes -- we have ear

18 protection, and it wires into the ear protection. It

19 looks like a pilot's headset, I guess.

20 Q. And which channel were you on? Was there more

21 than one channel that you were on, or just one?

22 A. I, as the individual operator, would usually

23 switch to whatever the internal team frequency is going

24 to be. I don't remember what it was that night. But

25 it was probably Metro SWAT 2. We use different ones

Page 72

1 depending on where we're at.

2 Q. Was there another channel that was open that

3 night -- or not open, but being used that night?

4 A. Most of the guys -- most of the -- essentially,

5 when I go to -- when I was there as patrol, we were

6 using the Fife primary channel, which is still open for

7 all the other operations that are going on. When we go

8 to the team stuff, I'm going to switch to an internal

9 channel that only the guys on the team are going to be

10 using, so that we can communicate without disturbing

11 the rest of the stuff that's going on around the scene.

12 Q. Okay. And then when you went to SWAT, was

13 there a second channel?

14 A. They will occasionally use a second channel. I

15 don't know if they did that night or not. But it's not

16 uncommon for, like, Wiley to want to talk to command

17 directly and not jam up our channel for our use. So he

18 might go to a different channel, talk to command, and

19 then come back.

20 Q. Could you hear Wiley talking to command that

21 night?

22 A. I could. Minus if he went to the sidebar. I

23 wouldn't follow him to the sidebar because it doesn't

24 mean anything to me. I'm going to stay on the team

25 internal that we're using amongst ourselves.

Page 85

1 A. Yes, sir.  
 2 Q. What was that prior contact?  
 3 A. I remember being at the house with him over  
 4 some sort of -- I knew he was the owner of the house.  
 5 And it was some sort of, I think, landlord-tenant  
 6 disagreement. It was either somebody renting the  
 7 garage or him and Leonard. I had dealt with him a  
 8 couple of times before. I don't think I ever arrested  
 9 him. I think it was -- I'm 90 percent sure it was,  
 10 like, some sort of landlord-tenant, civil-type  
 11 disagreement.  
 12 Q. Did you ever have any contact with Annalesa  
 13 Thomas before this particular evening?  
 14 A. Not one I remember. I mean, she could've been  
 15 at any one of those calls. There was a lot of people  
 16 coming and going from there, so --  
 17 Q. Did you have any prior contacts with Kim  
 18 Thomas?  
 19 A. That's one of his -- Leonard's former  
 20 girlfriends, correct? Or wives?  
 21 Q. Uh-huh.  
 22 A. I probably had spoken to her. I don't remember  
 23 which is -- because he had two, I believe. I don't  
 24 remember which one is which really well. But I know I  
 25 had spoken to ex-wives or ex-girlfriends in the course

Page 86

1 of some of those investigations.  
 2 Q. Two? Or more than two?  
 3 A. I remember that there were two of them that I  
 4 ended up dealing with. One, I believe, was a  
 5 girlfriend and the mother of the child. And I think  
 6 the other one was married to him at some point. I  
 7 don't remember exactly, though.  
 8 Q. In your report, you mention -- this is, again,  
 9 relating to Fred as he approached. You say: Fred  
 10 seemed frantic and made several mentions that he wanted  
 11 to help get his son out of the house and was worried he  
 12 would be killed.  
 13 When he said that he wanted to help get his son  
 14 out of the house, did he tell you any particular ideas  
 15 for that?  
 16 A. No. Not that I remember.  
 17 Q. Did you ask him?  
 18 A. No.  
 19 Q. Did any other officer, that you heard, ask him,  
 20 What do you think? How do you think we might be able  
 21 to get Leonard out of the house?  
 22 A. Not that I remember. Not in that circle there  
 23 of what was going on.  
 24 Q. Did you ever hear that anybody asked Fred  
 25 Thomas how he might help get his son out of the house?

Page 87

1 A. No.  
 2 Q. So once you handed Fred Thomas off to  
 3 Lieutenant Green, that's the end of your contact with  
 4 Fred?  
 5 A. Yes.  
 6 Q. Okay. I know that meanwhile, there were plans  
 7 being developed to try to get Leonard out of the house  
 8 or the child out of the house. Could you describe for  
 9 me the specific plans you learned about to do that?  
 10 A. I know that they had set some breaches on the  
 11 door, so there were some emergency plans put in place,  
 12 which is standard for us on hostage calls. But I know  
 13 it was just, like, an ongoing investigation.  
 14 Q. Set up breaches? Is that an explosive breach?  
 15 A. It is.  
 16 Q. And is that standard on hostage calls?  
 17 A. If it is feasible to use, yes.  
 18 Q. Why an explosive breach?  
 19 A. I'm not an explosive brief expert. So the  
 20 science of it -- I mean, those guys go to a lot of  
 21 school to learn how to do it, but --  
 22 Q. And I'm not asking about how you technically do  
 23 it. I'm asking about the philosophy behind using an  
 24 explosive breach.  
 25 A. Because it's -- it can be done away from the

Page 88

1 door, and it's a far more sure thing than using some  
 2 sort of mechanical breach.  
 3 Q. Like a ram, you mean?  
 4 A. Yes. Or a Halligan or a sledgehammer or  
 5 whatever other method. It's a far more sure thing.  
 6 Q. Could you analogize what the nature of the  
 7 explosion is?  
 8 A. Are you talking, like, how loud it is?  
 9 Q. Well, let's start -- yeah, I was interested in  
 10 that.  
 11 A. It's pretty loud. It's like a small charge. I  
 12 mean, I don't know. It's hard for me to --  
 13 Q. Is it louder than an M80?  
 14 A. Yes.  
 15 Q. Much louder?  
 16 A. Yes. It's loud. I would say it's equally loud  
 17 as a -- like a sound flash diversionary device.  
 18 Q. Like a flashbang?  
 19 A. That would be, like, a slang term for it, I  
 20 guess.  
 21 Q. Is it louder than a flashbang?  
 22 A. No. I don't know. I would say it's pretty  
 23 equal to. It's loud enough to ring your ears. I'll  
 24 tell you that. It's going to ring your ears. It's  
 25 loud.

<p style="text-align: right;">Page 105</p> <p>1 MR. CULUMBER: He's got to say what's going  2 on, for the record, so we can talk about it.  3 THE WITNESS: Okay.  4 MR. WHEDBEE: If we can discuss these  5 subjects, then Plaintiff reserves the right to recall  6 Officer Micenko to discuss these issues.  7 Q. (BY MR. WHEDBEE) So tell me what happened in  8 the debrief.  9 A. We gave, basically, an overview of the call.  10 There was discussions made about equipment needs.  11 There was discussions about stuff that we could've done  12 better, you know, the overall -- what the overall plan  13 was, and the future -- we always identify any training  14 gaps and equipment gaps and stuff like that in these  15 debriefs.  16 Q. Collectively, what was raised as to what the  17 group might have done better?  18 A. You know, I don't remember. I remember a  19 couple of equipment ones because they were kind of  20 off-the-wall things. But I don't remember. I remember  21 there was some disagreement over how command  22 communicated. But I was really new to the team, and  23 this was a lot for me. Imagine, like, this being your  24 first trial. You know, there was a lot going on. And  25 me taking it all in was a little overwhelming. So a</p>	<p style="text-align: right;">Page 107</p> <p>1 offense and SWAT's engagement, what else was raised as  2 far as things that the team might have done better?  3 A. We discussed, I remember -- kind of funny -- we  4 discussed some sort of -- trying to find some sort  5 of -- as opposed to tying off the door, some sort of  6 less lethal device. Specifically, Taser makes a device  7 that we discussed could be potentially useful. I  8 remember that, just because it was kind of an odd -- it  9 was something that I had never heard of.  10 Q. Did anybody have any criticism of Chief Zaro's  11 order not to let Leonard back in with the kid?  12 A. I think there were some questions about -- I  13 mean, I didn't have any questions about it. I would  14 say that. I think you're better off asking those guys.  15 Q. Well, I want to know what you heard in the  16 discussion.  17 A. I heard them discussing it.  18 Q. And what did they say?  19 A. Just what exactly it meant and what was going  20 on that led up to that. Because a lot of guys, at that  21 point, wanted to know what was going on that led up to  22 him saying that at that point.  23 Q. What did Chief Zaro say was going on up to that  24 point?  25 A. He mentioned that negotiations weren't going</p>
<p style="text-align: right;">Page 106</p> <p>1 lot of it -- I don't remember a lot of it.  2 Q. What was the specific disagreement about how  3 command communicated?  4 A. I think there was discussion over, you know,  5 whether -- what we were going to do once we got the  6 kid. You know, there was discussion over -- you know,  7 it's really rare for us, as SWAT, to be involved in a  8 misdemeanor assault. So there was discussion over that  9 being kind of a rare call for us.  10 Q. Who was discussing that issue?  11 A. The majority of the team members.  12 Q. So a majority of the team made note of the fact  13 that this was a misdemeanor assault and SWAT had been  14 engaged. And they were wondering about that; is that  15 fair?  16 A. Yes. I said very little at the debrief, just  17 because, like I said, I was brand-new. There was very  18 little that I had to offer that was of substance,  19 because it was -- like I said, for me, being new, there  20 was a lot of stuff going on that was just over my head  21 at that time.  22 Q. Do you recall certain officers being more  23 outspoken than others?  24 A. No. Not directly.  25 Q. Aside from that issue about the misdemeanor</p>	<p style="text-align: right;">Page 108</p> <p>1 anywhere; that he seemed to be becoming more and more  2 spun up, I guess; and that he felt, at that point, it  3 was our best opportunity; and that if the kid went back  4 in, then we would be in a worse situation than we were.  5 Q. Did Chief Zaro articulate any specific risks  6 that he anticipated, if Leonard had been able to go  7 back in the house with his son?  8 A. I don't remember him saying, like,  9 specifically, This was said, so I knew this, if that's  10 what you're asking.  11 I know he was concerned about it. To him, it  12 was a decisive call that he felt was right to make. I  13 remember that.  14 Q. What did he think was going to happen?  15 A. That the kid would get hurt, I'm assuming.  16 You'd have to ask him. I'm sorry.  17 Q. Well, again, I'm asking you what you heard,  18 inasmuch as Chief Zaro responded to the questions from  19 the group about wanting to know what had happened  20 before. So my question to you is, did Chief Zaro  21 articulate any specific concern he had about what  22 Leonard was going to do with the kid or to the kid if  23 he had managed to get back in the house with him?  24 A. I don't remember him saying, specifically,  25 anything, like, direct, like, He's going to shoot him,</p>



Page 109

1 or something like that.

2 But he was concerned about the kid, for the  
3 kid's safety if he went back in, enough that he felt  
4 the right decision was for us to go, at that point, and  
5 try to recover the kid -- Elijah. I'm sorry.

6 Q. I've been saying it, too.

7 I may have asked you this before. In your  
8 training, inside or outside of SWAT, dealing with  
9 hostage rescue, which scenarios have you gone through,  
10 if any, involving an adult, a parent of a child?

11 A. I don't recall any scenarios in training,  
12 specifically parent-child, as a hostage. Not to say  
13 that there hasn't been one, but not one that I can  
14 remember specifically.

15 Q. Have you seen any training films about the  
16 subject?

17 A. No.

18 Q. I may have asked you this before. But did you  
19 hear directly or hear about Leonard threatening anybody  
20 during this entire episode?

21 A. Speaking within the same parameters we set  
22 earlier defining "threat," correct?

23 Q. Well, define it again for me, just so I'm --

24 A. Like, some sort of physical action or verbal --  
25 like, actually waving some sort of weapon or saying

Page 110

1 specific --

2 Q. Correct.

3 A. No, I did not.

4 Q. And from your vantage point, did Leonard do  
5 anything to prevent the officers from entering the  
6 house?

7 A. You mean, like, locking doors or barricading  
8 them, or --

9 Q. Anything?

10 A. Aside from denying us entry verbally, no.

11 Q. Okay. Got it. Did Leonard ever hide in any  
12 way, that you saw?

13 A. No. I never saw him intentionally hiding.

14 Q. Did Leonard ever say, You can't come in my  
15 house, or words to that effect?

16 A. I just remember him telling me to leave the  
17 property, that I was trespassing. So I would take that  
18 as I'm not allowed in the house.

19 Q. Okay. Did you ever hear anything about Fred  
20 Thomas, that night or before, aside from your own  
21 interactions with him, about who he was or anything to  
22 be worried about or anything like that?

23 A. Aside from my prior experience with him,  
24 knowing he was the owner of the property, no. No  
25 safety flags on him or anything of that nature.

Page 111

1 Q. Was arresting Fred Thomas that night standard  
2 SWAT procedure under these circumstances?

3 A. I'm sorry. So you're saying -- can you -- are  
4 you saying that we -- is it standard that we arrest  
5 people on barricades? Yes. That's usually true, if  
6 they're present.

7 But I know the ultimate goal of that night was  
8 to get the kid out of there, not necessarily arrest  
9 Leonard Thomas, which is part of what we do. If we  
10 were to leave and Leonard wasn't going to be arrested,  
11 I don't think anybody was going to be heartbroken over  
12 it. I think we just wanted the kid away from him.

13 Q. So the plan wasn't to -- if the kid had been  
14 released, then as far as you know, you might have just  
15 let Leonard be?

16 A. That would've been a command decision, but  
17 potentially.

18 Q. What about Fred Thomas? Was it standard to  
19 arrest him in these circumstances?

20 A. Yes. I mean, we can't let him in there.

21 Q. I understand that you can't let him in there.  
22 But to arrest him for obstruction?

23 A. Well, yes. I mean, if the charges are -- if we  
24 decide later to -- or if the prosecutor decides to not  
25 file them or whatever, I have no heartburn over that.

Page 112

1 In fact, I think in this circumstance, I think that's  
2 exactly what happened. But if we're going to stop  
3 somebody, we're going to drag them off, handcuff them,  
4 and they committed the crime, then that's for them to  
5 decide. So, yes, I would generally arrest in that.

6 Q. You mentioned that you were driving the AT.  
7 Did you drive over the fence on accident or on purpose?

8 A. On purpose.

9 Q. By what authority did you do that?

10 A. We needed to put the vehicle back there. That  
11 was the position I was told to put it in, so we drove  
12 over the fence.

13 Q. Who gave you that order?

14 A. That probably would've been Jason Cannon.

15 Q. The AT and the Bearcat, are they used only by  
16 SWAT or also be any of the participant municipalities?

17 A. They're used almost exclusively by SWAT.

18 Q. You say, "almost exclusively." So let's say,  
19 you know, I'm sitting here in Fife. And for whatever  
20 reason, I could really use the Bearcat. Do I call you  
21 guys up and say, Can I borrow it? Or do I call you  
22 guys up -- call SWAT up and say, I need it. And then  
23 SWAT comes and operates it?

24 A. That one.

25 Q. The latter?

EXHIBIT 7



EXHIBIT 7



<p style="text-align: right;">Page 1</p> <p>1 UNITED STATES DISTRICT COURT 2 WESTERN DISTRICT OF WASHINGTON AT SEATTLE 3 4 FREDRICK and ANNALESA ) 5 THOMAS, and JO-HANNA READ, ) 6 as Guardian ad Litem of ) 7 E.T., a minor, ) 8 ) 9 Plaintiffs, ) 10 vs. ) 3:15-CV-05346 BJR 11 ) 12 JASON CANNON; BRIAN MARKERT; ) 13 RYAN MICENKO; MICHAEL WILEY; ) 14 MICHAEL ZARO; CITY OF FIFE, ) 15 CITY OF LAKEWOOD; and PIERCE ) 16 COUNTY METRO SWAT TEAM, ) 17 ) 18 Defendants. ) 19 20 DEPOSITION UPON ORAL EXAMINATION 21 OF 22 BRIAN MARKERT 23 24 25 9:00 A.M. June 29, 2016 6000 Main Street Southwest Lakewood, Washington Reported by: CONNIE FARANDA, RPR, CCR 2204</p>	<p style="text-align: right;">Page 3</p> <p>1 I N D E X 2 3 EXAMINATION BY: PAGE 4 Mr. Ford 4 5 6 7 8 9 10 EXHIBITS FOR IDENTIFICATION PAGE 11 Exhibit 23 Color photocopies of 74 12 photographs 13 Exhibit 24 Metro SWAT policy manual 94 14 Exhibit 25 Statement of Officer 144 15 Markert 16 Exhibit 26 Transcribed audio 144 17 recorded interview of 18 Brian Markert 19 20 21 &lt;&lt;&lt;&lt;&lt;&lt; &gt;&gt;&gt;&gt;&gt;&gt; 22 23 24 25</p>
<p style="text-align: right;">Page 2</p> <p>1 A P P E A R A N C E S 2 3 FOR THE PLAINTIFFS: 4 TIMOTHY K. FORD 5 DAVID J. WHEDBEE 6 MacDonald Hoague &amp; Bayless 7 705 Second Avenue, Suite 1500 8 Seattle, Washington 98104 9 206.622.1604 10 timf@mhb.com 11 davidw@mhb.com 12 13 14 FOR DEFENDANTS CANNON, MARKERT, MICENKO, WILEY, ZARO, 15 CITY OF LAKEWOOD, PIERCE COUNTY METRO SWAT TEAM: 16 RICHARD B. JOLLEY 17 Keating, Bucklin &amp; McCormack, Inc., P.S. 18 800 Fifth Avenue, Suite 4141 19 Seattle, Washington 98104-3175 20 206.623-8861 21 rjolley@kbmlawyers.com 22 23 24 25</p>	<p style="text-align: right;">Page 4</p> <p>1 Lakewood, Washington; June 29, 2016 2 9:00 A.M. 3 --oOo-- 4 5 BRIAN MARKERT, 6 sworn as a witness by the Certified Court Reporter, 7 testified as follows: 8 9 EXAMINATION 10 BY MR. FORD: 11 Q. Will you state your name and spell it for the 12 record, please. 13 A. My name is Brian, last Markert, M-a-r-k-e-r-t. 14 Q. And where do you work, sir? 15 A. City of Lakewood Police Department. 16 Q. What's your position there? 17 A. I'm a patrol supervisor now. 18 Q. And what's your rank there? 19 A. Sergeant. 20 Q. How long have you held that rank? 21 A. Since January. 22 Q. Of this year? 23 A. Correct. 24 Q. Prior to that, what rank did you hold? 25 A. Patrol -- or police officer.</p>



<p style="text-align: right;">Page 5</p> <p>1 Q. Had you ever been a sergeant before?</p> <p>2 A. Not as a police officer, no.</p> <p>3 Q. Were you a sergeant in the military?</p> <p>4 A. In the National Guard I was a sergeant for a</p> <p>5 while.</p> <p>6 Q. When did you have National Guard service?</p> <p>7 A. It was during college. It was called the</p> <p>8 simultaneous membership program. So I was -- I went to</p> <p>9 a military college. So while I was going to military</p> <p>10 college, I was also a member of the National Guard.</p> <p>11 Q. What was the college you went to?</p> <p>12 A. Virginia Military Institute.</p> <p>13 Q. And did you continue your National Guard</p> <p>14 service after graduation?</p> <p>15 A. No. I was commissioned as a lieutenant in the</p> <p>16 Army.</p> <p>17 Q. And how long did you serve in the Army?</p> <p>18 A. Four years. A couple of days over, but four</p> <p>19 years.</p> <p>20 Q. What was your duty -- what kind of unit did</p> <p>21 you serve in?</p> <p>22 A. I was an infantry officer.</p> <p>23 Q. Did you see combat?</p> <p>24 A. No.</p> <p>25 Q. What were the years of the service?</p>	<p style="text-align: right;">Page 7</p> <p>1 Q. Who? When?</p> <p>2 A. It was back in 2011. I was involved in</p> <p>3 another deadly force incident. This one was in the</p> <p>4 city of Lakewood.</p> <p>5 Q. Is that the only time?</p> <p>6 A. Correct.</p> <p>7 Q. Is that the only time you fired your weapon at</p> <p>8 another person, in your life?</p> <p>9 A. Yes.</p> <p>10 Q. Is that the only time you've discharged your</p> <p>11 weapon in the line of duty other than training?</p> <p>12 A. No. I've had to destroy aggressive and</p> <p>13 injured animals over my career. But other than --</p> <p>14 involving people, that was the only other time.</p> <p>15 Q. Have you ever had a deposition taken before?</p> <p>16 A. I have.</p> <p>17 Q. When was that?</p> <p>18 A. Two-thousand-and -- I don't know. Maybe '6 or</p> <p>19 so. It was for a criminal trial. It was a fairly</p> <p>20 short deposition.</p> <p>21 Q. A couple of rules. So far we're doing fine.</p> <p>22 She has to write things down that we say --</p> <p>23 A. Yeah.</p> <p>24 Q. -- so we have to talk separately.</p> <p>25 A. Uh-huh.</p>
<p style="text-align: right;">Page 6</p> <p>1 A. '91 to '95.</p> <p>2 Q. Did you graduate from VMI?</p> <p>3 A. I did.</p> <p>4 Q. What was your degree there?</p> <p>5 A. I got a bachelor of arts degree in history and</p> <p>6 with a minor in international studies.</p> <p>7 Q. Do you hold a rank still in the National Guard</p> <p>8 as a reserve or anything?</p> <p>9 A. No. I'm completely out of the military.</p> <p>10 Q. What police departments have you worked for</p> <p>11 other than Lakewood?</p> <p>12 A. I worked for Pierce County Sheriff's</p> <p>13 Department in the corrections bureau for about one</p> <p>14 year. And then I worked for the City of Redmond Police</p> <p>15 Department from about '97 to 2004.</p> <p>16 Q. On May 23rd-24th of 2013, you were a City of</p> <p>17 Lakewood officer; is that right?</p> <p>18 A. Correct.</p> <p>19 Q. And did you fire the shot that killed Leonard</p> <p>20 Thomas?</p> <p>21 A. Yes.</p> <p>22 Q. Have you shot anybody before Leonard Thomas?</p> <p>23 A. Another person?</p> <p>24 Q. Yes.</p> <p>25 A. Yes, I have.</p>	<p style="text-align: right;">Page 8</p> <p>1 Q. And sometimes I'm not clear in what my</p> <p>2 questions are. So please ask me to clarify if it's not</p> <p>3 clear so we're talking about the same thing.</p> <p>4 A. Okay.</p> <p>5 Q. You have attended a couple of the depositions</p> <p>6 in this case; is that right?</p> <p>7 A. I have, yes.</p> <p>8 Q. Which ones?</p> <p>9 A. Officer Cannon, Officer Wiley, and Officer</p> <p>10 Waller.</p> <p>11 Q. Was there a particular reason you chose to</p> <p>12 attend those?</p> <p>13 MR. JOLLEY: I'm going to object to the</p> <p>14 form. It calls for attorney-client privilege. And</p> <p>15 he's a party. And I'm going to instruct him not to</p> <p>16 answer.</p> <p>17 Q. (By Mr. Ford) Were you paid for your time in</p> <p>18 attending those depositions by the City of Lakewood?</p> <p>19 A. Yes.</p> <p>20 Q. And you're a member of the Pierce County Metro</p> <p>21 SWAT. Are you still?</p> <p>22 A. No.</p> <p>23 Q. When did you stop being a member of that?</p> <p>24 A. Earlier this month is when I officially</p> <p>25 resigned.</p>

Page 29

1 Q. And the same question with regard to whether  
 2 you listened in on any channels other than SWAT 2.  
 3 A. The only time I listened that I can recollect  
 4 listening to a side channel, SWAT 1, was when I spoke  
 5 to Officer Cannon. And we actually did that twice in  
 6 very close proximity. We spoke, and then he left  
 7 SWAT 1, and I had to pull him back there to talk to him  
 8 some more. I don't remember any other occasion during  
 9 that event where I was on a side channel.  
 10 Q. Tell me about your conversation with Officer  
 11 Cannon regarding whether there should be a sniper on  
 12 the back side of the house.  
 13 A. Basically his -- he was responsible for -- or  
 14 he was talking on the radio regarding coverage of what  
 15 we call the 3 side of the house, the rear of the house.  
 16 And he had described some of Mr. Thomas's movements,  
 17 that he could see him through a window on the rear of  
 18 the house.  
 19 So I basically said -- I talked to him about,  
 20 you know, whether or not it would be more valuable for  
 21 us to have the snipers split up and cover two different  
 22 sides, or whether it would be more valuable for us to  
 23 be in basically a mutually supportive position covering  
 24 the front of the house.  
 25 Q. Okay. And could you give me any more details

Page 30

1 about -- let's take that apart and talk about first  
 2 what Officer Cannon described to you regarding  
 3 Mr. Thomas's movements. Anything else you can tell me  
 4 about what he said about that subject?  
 5 A. I don't recall us discussing, per se, his  
 6 particular movements. During the conversation, I had  
 7 listened to Officer Cannon describe his movements  
 8 previously on the radio, that he was visible in this  
 9 window or that window. Other than that, no.  
 10 Q. Okay. And let me just broaden the question,  
 11 now that you've clarified, with regard to anything else  
 12 Officer Cannon said about Mr. Thomas's movements in the  
 13 back of the house. Anything else you remember about  
 14 his description of those movements or statements about  
 15 Mr. Thomas?  
 16 A. At various points, he described where he was.  
 17 I think at one point, he described him kind of dancing  
 18 around or something to that effect, visible in the  
 19 window. And this would have been throughout the  
 20 callouts where he was visible through the -- from the  
 21 3 side of the house.  
 22 Q. Did Officer Cannon ever say anything about the  
 23 location of the child, Elijah Thomas.  
 24 A. I don't recall any broadcast by him regarding  
 25 Elijah.

Page 31

1 Q. Any broadcasts by him that indicated that  
 2 Mr. Thomas, Leonard Thomas, had made any threats  
 3 against anyone?  
 4 A. I don't recall him making any transmissions of  
 5 that effect.  
 6 Q. Any transmissions about whether Leonard Thomas  
 7 had a weapon?  
 8 A. I don't recall him making any transmissions  
 9 about Mr. Thomas having a weapon.  
 10 Q. So let's talk about your discussion with  
 11 Officer Cannon about the need for a sniper in the back  
 12 versus two in the front. What more can you tell me  
 13 about that discussion?  
 14 A. You know, in the end, I basically said, Hey,  
 15 it doesn't sound like you have a whole lot going on  
 16 back there. So I'm going to stay out front.  
 17 Q. When you were having that conversation and  
 18 making that decision about what you were going to do,  
 19 was that something you would be doing because you're  
 20 the team leader of the snipers, or would any sniper  
 21 who's not a team leader be free to make a decision  
 22 about where to locate?  
 23 A. If I'm there, then, you know, I generally try  
 24 to coordinate things. That's one of my roles. But if  
 25 I was not there, then the snipers would basically have

Page 32

1 the authority to make those decisions independently and  
 2 notify command.  
 3 Q. When you had this communication with Officer  
 4 Cannon, was that when you were basically in the same  
 5 location as Officer Cannon, or was that after you moved  
 6 to the location from which you finally took the shot?  
 7 A. I believe it was while I was under the carport  
 8 with Officer Kenyon.  
 9 Q. Let me show you what's been marked as Exhibit  
 10 Number 18, it looks like, and ask you if you can tell  
 11 me where it was that you were with Officer Kenyon in  
 12 the carport that you just described. Whereabouts was  
 13 that in relation to the house?  
 14 A. Basically it was directly across the street.  
 15 Q. So it was the carport of another house?  
 16 A. Yes. It was a neighbor's house across the  
 17 street. And there was a covered carport area. And we  
 18 were in the carport together. Separated from one  
 19 another slightly, but we were both in the carport area.  
 20 Q. Did you ever --  
 21 A. So on the map where it say Kenyon, that is  
 22 where Officer Kenyon and I were for a portion of the  
 23 callout together.  
 24 Q. And then it looks like that somebody's also  
 25 marked an area where it says "Markert."

Page 77

1 Q. More than two?  
 2 A. Don't know.  
 3 Q. Are there protocols for that in terms of in  
 4 that kind of a situation, how many officers are  
 5 supposed to speak or not speak to an individual?  
 6 A. I didn't hear officers speaking over one  
 7 another. By that, I mean I didn't hear officers  
 8 basically trying to speak to one another where they  
 9 were basically giving conflicting guidance or anything  
 10 like that. But at times I heard different voices.  
 11 I distinctly remember -- I believe it was  
 12 Officer Rodriguez speaking to Leonard Thomas kind of  
 13 early in things. That's -- you know, I -- at this  
 14 point, that's all I can remember.  
 15 Q. Do you remember anything of the things that  
 16 Officer Rodriguez said to Leonard?  
 17 A. No, not specifically. Just generally, you  
 18 know, "Come on out," "Give yourself up," kind of that  
 19 general thing but nothing specific.  
 20 Q. Do you remember any of Leonard Thomas's  
 21 responses?  
 22 A. They were in the negative. That was when he  
 23 was cursing at us and telling us to get off his  
 24 property and we needed to leave.  
 25 Q. Were Leonard Thomas's responses responsive in

Page 78

1 the sense that, even if they were rude and impolite or  
 2 whatever they were, they were actually responding to  
 3 what the officers were saying rather than just randomly  
 4 saying things?  
 5 A. I don't -- I can't really say at this point.  
 6 I don't really remember exactly whether he was  
 7 responding to a direct comment from an officer or not.  
 8 Q. Did you have any impression from what you  
 9 heard as to whether he was mentally competent and had  
 10 his -- knew what was going on around him?  
 11 A. He seemed -- I mean, honestly he seemed  
 12 agitated. I got the impression that his voice sounded  
 13 slurred like maybe he was intoxicated or something like  
 14 that. He was very -- you know, a lot of animated hand  
 15 gestures, and he was yelling, moving his head around.  
 16 So I got the impression that he was agitated.  
 17 You know, we had been -- we had received  
 18 broadcasts that he might be bipolar and off his  
 19 medication. So, you know, I drew the connection that  
 20 it might be possible that he was having some sort of  
 21 mental health crisis. But I don't -- I don't know what  
 22 his -- you know, I'm not there to diagnose his -- you  
 23 know, what specific condition he may or may not have.  
 24 Q. Did he ever make any statements that made you  
 25 think that he was perceiving things that weren't the

Page 79

1 case, other than the fact that -- apart from the fact  
 2 that the police -- you know, his perception of the  
 3 police? Was he seeing things that weren't there or  
 4 describing things that were not happening?  
 5 A. He did say get off his property. And at that  
 6 point, I don't believe there were any officers -- as he  
 7 was screaming out the front window, he was telling us  
 8 to get off his property, and there were no officers on  
 9 his property at that point.  
 10 Q. Do you remember at any time the AT vehicle  
 11 driving in the backyard of the house?  
 12 A. I could not see the backyard. Or I couldn't  
 13 see where the AT was. I was told it was in the yard  
 14 back there, or at some point, you know, that came up  
 15 over the radio or was discussed within earshot of me  
 16 that the AT was in the rear yard or back -- 3 side. It  
 17 was covering the 3 side, you know.  
 18 Q. Did you hear any orders or discussion that led  
 19 up to the decision to take the AT into the back of the  
 20 house?  
 21 A. I don't remember anything specific.  
 22 Q. Were there any protocols on that as to whether  
 23 or not you'd drive the vehicle through the fence of a  
 24 house and into the yard when you do that?  
 25 A. If it's necessary to provide coverage for an

Page 80

1 area, then we do that at times, yes.  
 2 Q. Do you have any idea of whether it was  
 3 necessary to provide coverage for an area for the AT to  
 4 be driven in the back of the Thomas house?  
 5 A. I wasn't on the 3 side of the house.  
 6 Q. So you wouldn't be able to speak to that  
 7 question?  
 8 A. No.  
 9 Q. Okay. Let's go back to 23.  
 10 A. All right.  
 11 Q. The next page is number 31. And that's the  
 12 Bearcat again.  
 13 A. Yes.  
 14 Q. And can you tell who that police officer is?  
 15 A. Not from this photo. I -- not from that  
 16 photo.  
 17 Q. Okay. Do you think it's a member of the SWAT  
 18 team?  
 19 A. I don't think so. Because he's not dressed in  
 20 his -- you know, a callout uniform.  
 21 Q. Okay. Can you go on to 32, please?  
 22 Do you recognize either of those officers?  
 23 A. I have a -- not 100 percent, no.  
 24 Q. What about any guesses as to who they might be  
 25 or who they are?

<p style="text-align: right;">Page 121</p> <p>1 done full explosive breaches on doors and windows where  2 the snipers have been on observation. We're not going  3 to fire a bullet because -- well, there's cows on the  4 other side, and so we don't want to hurt the cows.  5 But we've done training with integration of  6 the entire team with explosive breaching. And then  7 we've also done -- I've been on operations where we've  8 used live operational breaches on warrants, this  9 particular mission, and other callouts where I've been  10 serving as a sniper while there was a live breach that  11 was -- explosive breach that was conducted.  12 Q. When you say you do integrated trainings, do  13 you do trainings along with the negotiators as well as  14 the other members of the SWAT team?  15 A. Yes.  16 Q. Are those regular, or are those special  17 training?  18 A. They don't -- so Metro SWAT trains two days a  19 month. And by that, I mean the entry element  20 basically. Or we focus on sort of entry-related  21 tactics. And when I'm not a -- when they don't need me  22 as a sniper, I'm an entry officer. And I'm also sort  23 of -- I'm an assistant team leader on the team in that  24 regard. Although I don't normally do assistant team  25 leader duties as an entry officer because they don't</p>	<p style="text-align: right;">Page 123</p> <p>1 Q. -- crouched down.  2 A. Right.  3 Q. And so the explosive breach goes off. What  4 does Elijah do?  5 A. He just sits there.  6 Q. You're able to still see him?  7 A. Yes.  8 Q. Your field of view includes him?  9 A. Yes.  10 Q. His whole body?  11 A. I don't remember exactly.  12 Q. What does Leonard do?  13 A. He basically kind of launches himself out of  14 the door. The door comes open. He comes very quickly  15 outside and, as I described earlier, wraps his arms  16 around Elijah's neck, pulls him fully off of his feet  17 so high that basically his -- Elijah's head was  18 basically in front of Mr. Thomas's head. And basically  19 his body was almost fully superimposed over his  20 father's body. And then he starts to retreat back into  21 the house with Elijah.  22 Q. And so -- you indicated with both arms,  23 Leonard grabbed him with both arms.  24 A. As I described earlier, he did put both of his  25 arms around his son's neck, yes.</p>
<p style="text-align: right;">Page 122</p> <p>1 want me to get wrapped up in stuff but they might need  2 me to do sniper stuff.  3 So the team trains two days a month, and then  4 the snipers train one additional day a month just as an  5 additional element. And then negotiators, they conduct  6 training -- I don't know. They have training sessions  7 of their own but not monthly. I believe it's  8 quarterly. And then normally once a year, we do a  9 large-scale, full exercise that involves entry -- I  10 mean, the entire tactical side of the element. So  11 entry snipers, all that stuff.  12 We'll have patrol officers serving as  13 perimeter or traffic control as role players, or they  14 might be first responders. Negotiators will be there  15 to do their piece of the event. And then command will  16 be on-site to basically provide incident and command  17 leadership during the event.  18 Q. So back to the earlier question. When the  19 explosive breach goes off --  20 A. Yes.  21 Q. -- Elijah's sitting on a step or the porch.  22 A. Uh-huh.  23 Q. Leonard is inside behind a door that's only  24 opened up a small distance --  25 A. Right. It's propped open by the --</p>	<p style="text-align: right;">Page 124</p> <p>1 Q. So you could see both of his arms.  2 A. Well, I mean, I could see his -- his -- I  3 can't see, like, both his arms from the shoulder down.  4 But I can see that he has both of his arms around his  5 son's neck.  6 Q. And you can see both of his hands?  7 A. Once again, I can see he has both of his arms  8 around his neck. I don't remember if I could see both  9 hands because, if I -- if I wrap both of my arms around  10 something, it is possible that my one hand is not  11 visible, depending on your vantage point.  12 Q. But as he wrapped his hands around Elijah, you  13 could see his hands.  14 A. Yes.  15 Q. You could see him come out the door and --  16 A. Yep.  17 Q. -- pick up Elijah.  18 A. Correct.  19 Q. Both hands.  20 A. Correct.  21 Q. No weapons in hands.  22 A. I did not see any weapons in his hand.  23 Q. Nothing in his hands.  24 A. I do not -- I didn't see anything in his  25 hands.</p>

Page 141

1 going to take additional actions that could harm his  
2 son, other than picking him up in the manner that you  
3 described and taking him back in the house, at the time  
4 you took the shot?

5 A. Yes. I was afraid that, if he got back in the  
6 house, I would be unable to prevent any future harm to  
7 Elijah. Mr. Thomas had told officers that he was armed  
8 with a pistol. And as I said earlier, when he was at  
9 the front door, it seemed to me that he made a  
10 purposeful attempt to hide his left side of his body  
11 and especially his left hand throughout that last  
12 exposure time frame at the front door. He had the  
13 2-by-4 right there. And then he's got a house full of  
14 I don't know what. Houses are full of things that can  
15 be used to inflict serious bodily injury or death,  
16 especially to a child.

17 Q. Okay. But officers were coming into that  
18 house from the back, weren't they?

19 A. Right. But they were delayed by the breach.  
20 They can't be right in front of the door when the  
21 breach occurs because all the energy from an explosive  
22 breach basically is redirected out. Very minimal  
23 energy is directed inside the structure. That's a  
24 function of and one of the benefits of that method of  
25 breaching.

Page 142

1 They have to make their way through the house.  
2 I don't know if the -- I don't even know if the back  
3 door is going to get opened by the explosive breach.

4 I basically -- one of my jobs is to protect.  
5 That's one of my big functions on the team, is I  
6 protect the team. I protect innocents. I protect the  
7 public.

8 And I can't protect Elijah if I let Leonard  
9 get back in the house with him. He's being -- a felony  
10 assault is occurring right in front of my eyes. He's  
11 choking his son, and he's retreating into a house where  
12 he knows that an explosive breach has occurred on the  
13 back door. I know that officers are going in there.  
14 There's going to be some sort of a confrontation and I  
15 cannot protect Elijah if I let him get back inside with  
16 him.

17 Q. So --

18 A. He will continue his assault on his son. And  
19 he has access to a pistol potentially and whatever  
20 other weapons are inside that household.

21 Q. He will, based on...? What is that, that --

22 A. I'm sorry?

23 Q. What is that you're basing that on when you  
24 say he will do? That's what you're concerned that he  
25 might do?

Page 143

1 A. Yeah. I mean, he's actively -- he's  
2 committing a felony assault of his son right now. I  
3 don't think it's going to get any better if he gets  
4 inside the house with his son. Conditions aren't going  
5 to improve. He is not going to -- I have no indication  
6 that he's going to stop assaulting his son when he gets  
7 inside the house. And the potential is that he will  
8 continue to assault his son when he gets inside the  
9 house. If he gets inside the house and the front door  
10 closes, there's nothing I can do to help Elijah at that  
11 point.

12 Q. So if he had simply picked Elijah up under the  
13 arms and taken him back in the house, all those dangers  
14 would have existed also, would they not?

15 A. Potentially, yes.

16 Q. So would you have shot him?

17 A. I -- I don't know.

18 Q. You might have.

19 A. I might have, yes.

20 Q. You'd been given an order not to let him go  
21 back into the house with the child.

22 A. There was a previous order given, yes.

23 Q. And that is part of why you were thinking that  
24 all these things could happen if he got back in the  
25 house with the child, isn't it?

Page 144

1 A. That was one of the factors I considered  
2 throughout my threat analysis.

3 Q. And you were assuming that, and given that  
4 command that Commander Zaro gave, things that maybe you  
5 didn't know that could have justified a concern about  
6 the threat to Elijah. Isn't that right?

7 A. It is possible, yes.

8 MR. FORD: Why don't we take lunch.  
9 (Deposition recessed from  
10 12:25 P.M. to 1:30 P.M.)  
11

12 <<<<<< >>>>>>

13  
14 (Deposition Exhibits 25-26 were  
15 marked for identification.)  
16

17 EXAMINATION

18 BY MR. FORD:

19 Q. So can you take a look at Exhibit 24 again,  
20 the manual, please.

21 A. Yes.

22 Q. And take a look again at, using the right  
23 corner numbers, page 99.

24 A. Chapter 23?

25 Q. Right. Where it says, down at the bottom:



Page 153

1 A. Something that basically develops as the plan  
2 is unfolding.

3 Q. Was Leonard a target of opportunity when you  
4 shot him?

5 A. I shot him because he was choking his son and  
6 he had his arms around his son's neck in a chokehold.

7 I didn't shoot him when he was in the doorway  
8 prior to the breach. I didn't shoot him when he was  
9 coming out of the doorway immediately after the breach.

10 I shot him after he wrapped his arms around his son's  
11 neck in a chokehold and then tried to take his son back  
12 inside the house.

13 Q. I'm just asking, does that --

14 A. Right.

15 Q. -- constitute a target of opportunity? I'm  
16 not sure what that phrase means.

17 A. Potentially, I guess. I don't -- you know, we  
18 don't have a definition here in the manual that I'm  
19 aware of that defines exactly what that means.

20 Like a designated target would be, as part of  
21 the tactical plan, let's say you have three hostage  
22 takers -- or let's say we have three terrorists who  
23 have bomb vests on. Your job is to shoot terrorist  
24 number 1, and your job is to shoot terrorist number 2.  
25 And you're responsible for shooting any terrorist that

Page 154

1 tries to run out the front door and shoot himself, or  
2 blow himself up.

3 The guy coming out the front door, that would  
4 be a target of opportunity. The other two guys would  
5 be designated targets.

6 Q. Okay. And that would be dictated by the  
7 assault plan.

8 A. Correct.

9 Q. Was there an assault plan here?

10 A. There was a rescue plan basically that was put  
11 out over the radio about who would do what when we  
12 decided that it was necessary to initiate a rescue of  
13 Elijah.

14 Q. And isn't that the same as an assault plan?

15 A. Yeah. Yeah.

16 Q. And was part of that, that Leonard was not  
17 allowed to -- not to be allowed to go back in the house  
18 with Elijah?

19 A. That wasn't specifically stated. When the  
20 plan was given out over the air, it didn't specifically  
21 state that anybody or any particular element would --  
22 must prevent him from going back inside the house with  
23 Elijah.

24 It was basically that, when the plan was  
25 offered out over the radio, it described the actions

Page 155

1 that officers would take once basically it had started,  
2 which basically starts with the breach. That's when  
3 things kind of -- well, that's not true. It starts  
4 with the countdown. The countdown is when the plan  
5 basically is initiated. When that starts, then the  
6 plan initiates. Because there's certain things that  
7 may happen during the countdown that are part of the  
8 plan that are active in nature. So the breach doesn't  
9 start the plan. It's part of the plan.

10 Q. Okay. And so what was the plan that was put  
11 out over the radio?

12 A. Basically that there would be an explosive  
13 breach conducted on the back door. And this was kind  
14 of the -- I guess we'll call it the final plan, because  
15 we had discussed various options throughout the event,  
16 like the use of less lethal if we could while  
17 Mr. Thomas was out and Elijah was out, or possibly  
18 going in through windows with ladders.

19 But the final plan, the plan that was  
20 basically initiated, if that's -- is your question  
21 regarding the plan that was initiated --

22 Q. Yes.

23 A. -- that led -- okay.

24 Basically, then, an explosive breach would be  
25 effected on the rear of the residence, 3 side; that the

Page 156

1 officers staged off to the side of the house would go  
2 in through the 3 side and basically prevent Mr. Thomas  
3 from coming back in the house, or basically deal with  
4 him if he was able to get inside the house.

5 And then the officers by the Bearcat would  
6 approach the front of the house, the 1 side, and enter  
7 through the front door. And their job was also to --  
8 if Elijah was on the front stoop, they were to rescue  
9 him and remove him from the scene.

10 Q. And was all that stated in a comprehensive  
11 way? I mean, just more or less as you said it, over  
12 the radio?

13 A. In a shorter way. I mean, I do believe it was  
14 Officer Wiley who basically got on the air and said  
15 this is the plan.

16 Q. Does Wiley always swear a lot?

17 A. Yes. Yes, he does. Honestly.

18 Well, not always. I mean, not when he's  
19 talking to -- I don't know. I don't know.

20 Q. So going back onto this page 100, the last  
21 sentence of that paragraph says: "The use of deadly  
22 force can be based on collective knowledge, as passed  
23 on from other team members or command element."

24 Is that your understanding?

25 A. I'm sorry; where are we reading --



Page 189

1 with SWAT experience, and then a couple of patrol  
2 officers. And we forced entry into the apartment. And  
3 then we got between him and her.

4 And he was holding a knife to his own throat  
5 at the time, and then we took him into custody. I  
6 would call that a -- as I refer to it, a patrol hostage  
7 rescue. That's the term I refer to it as.

8 Q. And was there something preventing him from  
9 harming her during the time you were forcing entry?

10 A. No, not that I'm aware of. He was at the  
11 window talking to -- yelling at somebody, an officer  
12 through the window. Or through the blinds.

13 Q. Your report says you and Officer Kenyon were  
14 designated as Sierra-1.

15 A. Correct.

16 Q. What does -- does that have some significance?

17 A. It means that we are a sniper element, and we  
18 are covering the 1 side, the designated 1 side of a  
19 structure.

20 Q. I see.

21 A. So it's just -- so I don't have to get on the  
22 air and say Markert or Kenyon all the time. It's  
23 basically -- they know, when we get on the air, it's  
24 the snipers who were covering the front of the house,  
25 in this case.

Page 190

1 Q. You heard Leonard Thomas say that he'd done  
2 nothing wrong?

3 A. Yeah, that's what he said.

4 Q. Did you ever hear him say that he had, in  
5 fact, himself been assaulted?

6 A. No, I never heard him say that.

7 Q. Did you hear anybody -- did anybody ever tell  
8 you that he had said that during the night?

9 A. During that night?

10 Q. Yeah.

11 A. No.

12 Q. Did you hear that later?

13 A. Yes. I've heard it during the depositions.

14 Q. Other than that?

15 A. I don't believe so.

16 Q. Did you ever hear his mother say anything that  
17 night about whether she had assaulted Leonard?

18 A. I did not speak to his mother.

19 Q. Nobody told you, though, that she had said  
20 that that night?

21 A. Not that I recall.

22 Q. You indicate in your report that at one point  
23 Commander Zaro --

24 A. Which page are we referring to?

25 Q. I'm sorry. I'm on page 6.

Page 191

1 A. Okay.

2 Q. -- radioed the team, asking that they  
3 not communicate directly -- I guess it says Commander  
4 Zaro or the negotiators radioed the team, asking that  
5 they not communicate directly with the suspect as  
6 negotiators were trying to get him to answer the phone.

7 A. Uh-huh.

8 Q. Was that a request that they stop altogether,  
9 or just for that moment that they were trying to get  
10 him on the phone? Or was it, "Stop talking to this  
11 guy, let the negotiators handle it" for the whole time?  
12 Do you remember?

13 A. It wasn't -- basically the intent is, Hey,  
14 stop talking to him so we can get him on the phone.  
15 But there are situations where officers may -- what we  
16 call direct negotiations, where you're basically  
17 talking to them, not maybe face-to-face close  
18 proximity, but you're talking to them not through a  
19 phone or whatever else. You're basically having a  
20 conversation with them.

21 So there might be situations where direct  
22 negotiations would be appropriate. Like if he's -- if  
23 someone is on the outside of a building with no phone,  
24 they're not on the phone with negotiators, and you want  
25 to maybe, you know, give them directions. And that

Page 192

1 would be, you know, something that might be  
2 appropriate.

3 Q. Just right below that line -- and this is  
4 still on page 6 of your report if you want to look --  
5 it says: Over the next several hours the suspect  
6 appeared at the upstairs window intermittently, waving  
7 his arms and gesturing wildly..."

8 When he did that, was there a clear shot from,  
9 say, Officer Kenyon's vantage point?

10 A. I'm sorry; I didn't hear your question  
11 exactly.

12 Q. When Mr. Thomas did that, was there a shot  
13 that could have been taken from Officer Kenyon's  
14 vantage point?

15 A. If he had determined that deadly force was  
16 necessary, it would have been possible for him to --  
17 I'm not exactly sure about elevation or whatnot. But  
18 when I was under the -- yeah, it's possible that he  
19 would have had a clear view.

20 Q. And was Mr. Thomas doing anything to shield  
21 himself from such a shot at that time?

22 A. Not when he wasn't -- when he didn't have  
23 Elijah with him, he was by himself or with the dog.

24 Q. Going down, you say in the next line, he was  
25 yelling about his hatred of Fife police?

EXHIBIT 8



EXHIBIT 8



<p style="text-align: right;">Page 1</p> <p>1 UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON AT SEATTLE</p> <hr/> <p>3 FREDRICK and ANNALESA THOMAS; ) 4 and JO-HANNA READ, as ) Guardian ad Litem of E.T., a ) 5 minor, ) 6 Plaintiffs, ) 7 vs. ) 3:15-cv-05346 BJR 8 JASON CANNON; BRIAN MARKERT; ) 9 RYAN MICENKO; MICHAEL WILEY; ) 10 MICHAEL ZARO; CITY OF FIFE; ) CITY OF LAKEWOOD; and PIERCE ) COUNTY METRO SWAT TEAM, ) 11 Defendants. )</p> <hr/> <p>13 DEPOSITION UPON ORAL EXAMINATION OF 14 MICHAEL WILEY</p> <hr/> <p>16 1:37 P.M.</p> <p>17 APRIL 29, 2016</p> <p>18 6000 MAIN STREET SOUTHWEST</p> <p>19 LAKEWOOD, WASHINGTON</p> <p>24 REPORTED BY: CINDI ULLMAN, CCR 2687</p>	<p style="text-align: right;">Page 3</p> <p>1 I N D E X</p> <p>2</p> <p>3 EXAMINATION BY: PAGE(S) 4 MR. WHEDBEE 4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12 EXHIBITS FOR IDENTIFICATION PAGE 13 Exhibit 17 Co-Op Cities Metro Crime Response 72 14 Unit: Interview transcript 15 Exhibit 18 Drawing 135</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 2</p> <p>1 A P P E A R A N C E S</p> <p>2</p> <p>3 FOR THE PLAINTIFFS: 4 DAVID J. WHEDBEE TIMOTHY K. FORD 5 MacDonald Hoague &amp; Bayless 705 Second Avenue, Suite 1500 6 Seattle, WA 98104 206.622.1604 7 davidw@mhb.com timf@mhb.com</p> <p>8</p> <p>9</p> <p>10 FOR THE DEFENDANTS: 11 RICHARD B. JOLLEY Keating, Bucklin &amp; McCormack, Inc., P.S. 12 800 Fifth Avenue, Suite 4141 Seattle, WA 98104 206.623.8861 13 rjolley@kbmlawyers.com</p> <p>14</p> <p>15</p> <p>16 FOR THE CITY OF FIFE: 17 F. HUNTER MacDONALD VSI Law Group PLLC 18 225 Tacoma Avenue South Tacoma, WA 98402 253.922.5464 19 hunter@vsilawgroup.com</p> <p>20</p> <p>21</p> <p>22 ALSO PRESENT: 23 BRIAN MARKERT 24 JASON BARNEY, Washington Cities Insurance Authority</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1 LAKEWOOD, WASHINGTON; APRIL 29, 2016</p> <p>2 1:37 P.M.</p> <p>3 --oOo--</p> <p>4</p> <p>5 MICHAEL WILEY, 6 sworn as a witness by the Certified Court Reporter, 7 testified as follows:</p> <p>8</p> <p>9 EXAMINATION</p> <p>10 BY MR. WHEDBEE:</p> <p>11 Q. Good afternoon, Officer Wiley. We met before 12 the deposition started. My name is David Whedbee. I 13 represent Fred and Annalesa Thomas, along with my 14 colleague here, Tim Ford.</p> <p>15 I'm just going to ask you a few preliminary 16 questions about the deposition process to make sure you 17 understand. First of all, is this the first deposition 18 that you have ever given?</p> <p>19 A. Yes.</p> <p>20 Q. So there's a few ground rules. I'll go over 21 them real quick.</p> <p>22 As you can imagine, I'm going to ask you a 23 series of questions. If you could let me finish my 24 question before you respond, that's good; and likewise, 25 I'll try to let you complete your answer before I ask</p>

Page 57

1 A. That one, I don't remember, as in exactly  
 2 which, because I know I was looking through both  
 3 throughout the night.  
 4 Q. Okay. And then when you approached, you went  
 5 around the back of the BearCat; is that correct? And  
 6 then went towards the porch?  
 7 A. Yes.  
 8 Q. Okay. Do you know whether you went around the  
 9 front of the car or the back of the car that's in the  
 10 middle distance?  
 11 A. Well, that, I don't remember.  
 12 Q. Okay. And then -- and then you had to leap  
 13 this -- this picket fence?  
 14 A. Yes.  
 15 Q. Did Leonard reach for his child before or  
 16 after the explosive breach was detonated?  
 17 A. It was after.  
 18 Q. Was it immediately after, or...?  
 19 A. Yeah.  
 20 Q. And as you approached the way we were  
 21 describing before, sort of coming around the rear end  
 22 of the BearCat and then up, when you were making that  
 23 approach, did you see Leonard get shot?  
 24 A. Did I see him get shot?  
 25 Q. Yeah.

Page 58

1 A. No.  
 2 Q. During that approach, when did you hear the  
 3 sniper shot?  
 4 A. That, I don't recall. It was -- it was close.  
 5 It was somewhere there, but I don't remember if the  
 6 shot went out before we turned or while we --  
 7 Q. When you say "turned," turned --  
 8 A. Just turned around the corner of the BearCat  
 9 where I turned around.  
 10 Q. Okay.  
 11 A. I don't remember.  
 12 Q. When you got to the front door, was Leonard  
 13 down?  
 14 A. Yes -- well, when I got to the front door, I  
 15 mean, he was inside, if that's what you mean.  
 16 Q. Did he fall sort of right -- right on the  
 17 inside of the door?  
 18 A. Oh, I don't know.  
 19 Q. Okay. Well, when you got to him, where was  
 20 he?  
 21 A. When I got -- when I got -- when I got there,  
 22 he was a few feet into the -- into the living room or  
 23 by the front door, but -- that's where he was.  
 24 Q. Okay. Were there other officers on top of him  
 25 when you got there?

Page 59

1 A. We were -- there was one by him, but...  
 2 Because I know another officer was grabbing the child,  
 3 Elijah, out of the way. But I don't -- I don't know  
 4 what you mean, "on top of him."  
 5 Q. Well, were there other officers near him, by  
 6 him, touching him?  
 7 A. Yes. Well, there --  
 8 Q. You weren't the first one to get there, in  
 9 other words.  
 10 A. Nah, I wasn't the first one to get there.  
 11 Q. Okay. So how many officers were there when  
 12 you arrived?  
 13 A. There was at least two.  
 14 Q. And when you got there, was the child still  
 15 within Leonard's grasp, or had it been taken away from  
 16 Leonard?  
 17 A. Elijah had been removed from Leonard, yeah.  
 18 Q. And was there any blood on Elijah?  
 19 A. I don't know.  
 20 Q. Was Elijah crying?  
 21 A. I don't remember.  
 22 Q. Did Elijah say anything?  
 23 A. I don't remember.  
 24 Q. And what kind of condition was Leonard in?  
 25 A. He was on the ground. He had a -- a gunshot

Page 60

1 wound. I know somebody was working on him, trying to  
 2 give medical attention. But guys were still moving,  
 3 going upstairs, and all that, so...  
 4 Q. And what did you do in particular when you got  
 5 into the house?  
 6 A. I just stayed by the front for a second, moved  
 7 past Leonard towards the -- so if you're looking -- if  
 8 you're -- if you're standing at the front door and  
 9 you're looking into the house, there was a staircase on  
 10 your left-hand side that would go up. And then if you  
 11 looked towards your right, there was a -- kind of an  
 12 opening that like would go to a kitchen and I guess a  
 13 mudroom or a laundry room, or something like that.  
 14 Just kind of seeing, okay, well, who needed  
 15 help with anything. Everyone was good. They were  
 16 still working, so I came back to the -- the front of  
 17 the house to make sure, Hey, let's get fire rolling  
 18 this way right away; you know, have them respond  
 19 immediately.  
 20 Q. And is that when the medics came in or --  
 21 A. No. We had -- we had two medics with us, so  
 22 they -- they were doing the initial treatment. And  
 23 just because of the -- how tight everything was, he got  
 24 escorted to a kind of a bigger location where they  
 25 could kind of properly treat.

Page 61

1 Q. Under the carport?  
 2 A. Yes. So that way they're not -- nobody's  
 3 getting in their way or vice versa. So that way the --  
 4 the fire rig could get closer and take him to the  
 5 hospital.  
 6 Q. Do you know about how much time passed between  
 7 when you first got into the -- inside the house and saw  
 8 Leonard -- between that time and when he was  
 9 transported on the livery out to the carport?  
 10 A. No. It might be in the transcripts. I don't  
 11 know.  
 12 Q. Okay. I mean, was it like 15 minutes or was  
 13 it --  
 14 A. No.  
 15 Q. -- three minutes?  
 16 A. Nah. It was just a couple minutes. I  
 17 couldn't give you exact.  
 18 Q. Okay. We're going to kind of go back into the  
 19 incident a little bit and ask if you could describe for  
 20 me the different rescue plans that were developed  
 21 throughout the course of the incident before there was  
 22 the decision to use the explosive breach.  
 23 A. Okay.  
 24 Q. What were they?  
 25 A. The first was have a rescue team on side 3 and

Page 62

1 a rescue team on side 1, because that's where the --  
 2 the doors were. But because Mr. Leonard was upstairs a  
 3 lot, we tried to come up with a way of ladders or  
 4 something to try to -- try to get up there and kind of  
 5 shrink the problem a little bit, as opposed to -- so if  
 6 we can try to get guys upstairs, but trying to figure  
 7 out how to do that with the equipment that we had.  
 8 His dog was just a factor, as in, "Okay,  
 9 there's a dog in here; just be aware of that" type of  
 10 deal. But for the side 1, side 3, and then try to  
 11 figure out how we could get guys up to the top floor,  
 12 level 1, through side 1, because I didn't see any  
 13 openings. I don't know the type of -- upstairs looked  
 14 like.  
 15 Q. So one plan was to use a ladder to get into  
 16 the upstairs, but that was rejected because it wasn't  
 17 practical?  
 18 A. It was more of timing: How do we get the  
 19 ladder up there fast enough, a tall enough ladder? Do  
 20 we use maybe the BearCat to bring the ladder in closer  
 21 and have guys on the -- on the roof? We kind of  
 22 war-gamed a few, you know -- "If we had to do it, you  
 23 know, you know, how could we do it" type of deal.  
 24 We talked about a possible port and covers on  
 25 the windows.

Page 63

1 Q. Say that again? Port and cover?  
 2 A. Port and covers.  
 3 Q. What's that mean?  
 4 A. Just break out a window. "Gain visibility  
 5 inside the house" type of stuff. Those were kind of  
 6 the factors that we had.  
 7 Q. Were you receiving intelligence from the two  
 8 snipers, Markert and Kenyon, about what was going on in  
 9 the house through -- because they were looking through  
 10 their scopes?  
 11 A. Yes.  
 12 Q. And how frequent was the update from the  
 13 snipers?  
 14 A. When they saw something, they reported it --  
 15 movement, stuff like that.  
 16 Q. Did either of the snipers ever report that  
 17 they saw Leonard with a gun in any of the windows?  
 18 A. Not that I recall.  
 19 Q. Did either of the snipers ever report that  
 20 they saw Leonard somehow physically threatening his  
 21 child?  
 22 A. I don't remember.  
 23 Q. Okay. And so -- and you said "port," as in  
 24 p-o-r-t?  
 25 A. Yes.

Page 64

1 Q. And the object of that, the objective of that  
 2 would be to see into the house better?  
 3 A. Yes.  
 4 Q. Is that when there's a curtain or something  
 5 like that?  
 6 A. Yeah.  
 7 Q. And what happened with this plan?  
 8 A. We -- a little bit the height of the windows  
 9 requires somebody bringing ladders for them. The  
 10 amount of bodies we have on the team, it just didn't  
 11 seem like a viable option. And then we didn't know  
 12 where -- if we ported a certain window, it would just  
 13 go into a closet or like a small room or something.  
 14 Q. Okay. Was there another plan, a rescue plan?  
 15 A. No.  
 16 Q. Was there a rescue plan by which Annalesia  
 17 Thomas would ask Leonard to release the child?  
 18 A. Oh. Yeah. Sorry. Yeah, there was. Yeah.  
 19 Q. Can you describe how that was going to work?  
 20 A. The goal was for her to convince her son to  
 21 allow Elijah to go free. The... Whatever that road  
 22 is; I forget the street name.  
 23 Q. 55th; is that right?  
 24 A. (Witness indicating.) I think.  
 25 Q. Okay. The Fife guys knew?

<p style="text-align: right;">Page 105</p> <p>1 to move. That would require people to get a little bit  2 closer. With the dog every now and then going in and  3 out, it compromises them as well.  4 Q. So the reason that you didn't attempt to bring  5 somebody up side 4 and maybe use a less-lethal  6 projectile was because you had too few people?  7 A. No. I think he, at that point, had already  8 gone back in the house. It was too late for them to  9 get from where they were to there, unseen by  10 Mr. Leonard.  11 Q. And I guess what I'm trying to ask is, Why  12 could you not wait until Leonard reappeared on the  13 porch and then try to do the less lethal from the 1-4  14 corner?  15 A. I didn't know when he was coming back.  16 Q. I understand, but...  17 A. You asked a question. I answered it.  18 Q. Okay. If you go to -- so you said that  19 Leonard went back into the house at some point?  20 A. Yes.  21 Q. With the child?  22 A. Yes.  23 Q. Okay. If you flip to page 33.  24 A. Which one?  25 Q. I'm sorry. Of your interview transcript.</p>	<p style="text-align: right;">Page 107</p> <p>1 element.  2 Q. When you're talking at this point, had the  3 explosive breach been set?  4 A. Sorry?  5 Q. Had the charge been set for the explosive --  6 A. Has it been hung from the door?  7 Q. Yeah.  8 A. I don't know. I -- I -- the sequence? Yes,  9 it got set. I don't know where in the sequence it got  10 set.  11 Q. Okay. But at least in this point, looking at  12 the narrative in your interview, by this point in the  13 narrative, the charge has been hung; is that right?  14 A. I don't know.  15 Q. Okay. So if you go down in that same page,  16 page 33, you say on 1472 or so: "Oh fuck. Okay we're  17 definitely doing an explosive breach on this thing  18 because we have to have positive..." And then the  19 questioner cuts you off.  20 What -- what are you saying there?  21 A. The -- if -- if we're going to make an  22 emergency rescue, we have to have a positive breach.  23 Q. Okay.  24 A. It's like a firefighter. I mean, you try and  25 get somebody out of the house. You want that door to</p>
<p style="text-align: right;">Page 106</p> <p>1 Sorry about that.  2 A. It's okay. I'll just put it back here then  3 (indicating).  4 Q. That's fine.  5 A. Thirty-three?  6 Q. Yeah. So it looks like around 1449, 1450, you  7 say --  8 A. Okay.  9 Q. You say (as read): "But grabbed the kid and  10 they darted back inside." Okay.  11 And then you say (as read): "I'm like, quote,  12 Oh, Kannen[sic], hold, hold, hold. Get back to Side 3.  13 He's back in the house. So they pulled back and I  14 said, Hey, Kannen just take your team, the detached  15 garage. Stay over there. Let's stop fucking around  16 with this, because going all the way back to the  17 original" -- and this doesn't make sense to me --  18 "case is not going to do any good"?  19 What is it -- do you have any idea what's --  20 what you're trying to say there or what --  21 A. I have no idea what that is.  22 Q. Okay. Was there some original plan that you  23 were going to go back to, or...?  24 A. Yeah. Jason was responsible for side 3, and  25 so having him on side 4 doesn't make sense with his</p>	<p style="text-align: right;">Page 108</p> <p>1 go the first time so you can get the kids out and the  2 family members out. We just have to have a positive  3 breach on the first time.  4 Q. And so that's why you were going to choose the  5 explosive breach as opposed to something else? Is that  6 what you're saying, or...?  7 A. Yes.  8 Q. Was there any reason -- was there any other  9 reason for an explosive breach? Were you using it as a  10 diversion?  11 A. No, we're actually deployed and have to  12 [indistinct] --  13 (Reporter interruption/clarification.)  14 Q. (BY MR. WHEDBEE) Huh?  15 A. I'm sorry. I could have used NFDDs as a  16 diversion. It was more just we want to make sure that  17 we have a positive way to get inside the house. It's  18 just benefit that when the breach, explosive breach  19 happens we get that -- we also get an effect of  20 surprise or distraction.  21 Q. Was that a desired effect?  22 A. It's always a desired effect to disorient the  23 persons.  24 Q. On the next page, you say, "It looked like a  25 big 2x4 or something." Was that what you referred to</p>



<p style="text-align: right;">Page 141</p> <p>1 BearCat; is that where you are when the shot goes off?</p> <p>2 A. I think so.</p> <p>3 Q. Okay.</p> <p>4 A. A shot goes out. I know the breach is going.</p> <p>5 Somebody up front of me -- I think it was -- it was</p> <p>6 Waller -- ends up pushing down side 4 toward the --</p> <p>7 toward the back side. Somebody was in front of Vance,</p> <p>8 but I don't remember who it was, getting to the front</p> <p>9 door.</p> <p>10 At this point, the dog comes out pretty</p> <p>11 aggressively. Vance shot the dog. The dog goes down</p> <p>12 for a second. Because I'm just climbing over that</p> <p>13 fence, I told Vance keep going, because we only have</p> <p>14 one guy up at that door. The dog gets -- so Vance</p> <p>15 moves away from the dog, or just kind of makes a --</p> <p>16 going straight towards the -- the front door.</p> <p>17 The dog starts getting up. I didn't know if</p> <p>18 he was going to attack him or go inside the house and</p> <p>19 attack team members or -- or what. I ended up shooting</p> <p>20 the dog three times. That part, I didn't get a chance</p> <p>21 to relay the information, "Hey, we shot the dog."</p> <p>22 Once I get to the -- the threshold, I see the</p> <p>23 -- the team in the back kind of starting to -- you</p> <p>24 know, we talked about that opening. They're coming</p> <p>25 from the back towards the front, as in the middle of</p>	<p style="text-align: right;">Page 143</p> <p>1 don't know if it was the next house or the one after</p> <p>2 that. It was just -- it was one of those two. If</p> <p>3 you're looking at the front of the house, it's to the</p> <p>4 left. I called for the ambulances to respond</p> <p>5 immediately to the -- to the corner so we can get him</p> <p>6 to a trauma center.</p> <p>7 Somewhere in there, somebody said somebody had</p> <p>8 the kid, Elijah. But I -- I didn't physically see him</p> <p>9 for a second; at least I don't think I did, you know,</p> <p>10 like right now.</p> <p>11 Q. If you look into your interview real quick.</p> <p>12 A. Sure. Is this it?</p> <p>13 Q. Yep. Exhibit 17, page 43.</p> <p>14 A. Forty-three?</p> <p>15 Q. Yeah. Tell me, what was -- what was Leonard's</p> <p>16 reaction to the -- to the explosive breach.</p> <p>17 MR. JOLLEY: Object to the form.</p> <p>18 Q. (BY MR. WHEDBEE) That you saw.</p> <p>19 A. What I saw?</p> <p>20 Q. Mm-hm.</p> <p>21 A. Mr. Leonard?</p> <p>22 Q. Mm-hm.</p> <p>23 A. Thought it was going to kill him.</p> <p>24 Q. At line 1915 -- oh, you thought -- line 1915,</p> <p>25 you said, "He just freaking panicked and grabbed the</p>
<p style="text-align: right;">Page 142</p> <p>1 the house and then starting to move their way upstairs.</p> <p>2 My guys on side 1 are starting to push -- at</p> <p>3 this point, the child's already been removed, because</p> <p>4 it took -- like I said, it took me a little bit to get</p> <p>5 over the fence. When the dog came up, I put three in</p> <p>6 the dog. Then I -- then I'm catching back up with the</p> <p>7 guy, so there was already a little bit of space and</p> <p>8 time inside the -- inside the house.</p> <p>9 Somebody was with -- with Leonard. I couldn't</p> <p>10 tell you who it was, kind of checking him out. Once we</p> <p>11 had separation, the jackpo- -- or the command or the</p> <p>12 code word of, Hey, we've -- we have separated. The</p> <p>13 host- -- was taken from the hostage, or we have the</p> <p>14 child safely with us. That came out.</p> <p>15 Q. What's that?</p> <p>16 A. What?</p> <p>17 Q. The code word you said?</p> <p>18 A. Oh, "jackpot."</p> <p>19 Q. Okay.</p> <p>20 A. It's just a term. It's a term.</p> <p>21 Call for medics. So we have two team medics.</p> <p>22 One's with Central Pierce, and then Sergeant Rodriguez</p> <p>23 at that time was also one of our team medics. So they</p> <p>24 started working on Leonard. Like because of the</p> <p>25 cramped space and all that, moved him over to -- I</p>	<p style="text-align: right;">Page 144</p> <p>1 kid."</p> <p>2 A. Right.</p> <p>3 Q. Is that accurate?</p> <p>4 A. Yeah. He -- he grabbed that kid.</p> <p>5 Q. Was he panicked?</p> <p>6 A. His actual mental state? I -- I can't testify</p> <p>7 to that.</p> <p>8 Q. You said it here. I'm just wondering --</p> <p>9 A. Sure. He -- he appeared panicked.</p> <p>10 Q. Okay. And he was panicked because of the</p> <p>11 breach; is that right?</p> <p>12 A. That could have been.</p> <p>13 Q. Is that what you say there on line 1922?</p> <p>14 MR. JOLLEY: Object to the form.</p> <p>15 A. Yes. It says, "It was -- it was because of</p> <p>16 the breach."</p> <p>17 Q. (BY MR. WHEDBEE) So from your perception, you</p> <p>18 believed that Leonard was panicked because of the</p> <p>19 breach?</p> <p>20 MR. JOLLEY: Object to the form.</p> <p>21 MR. WHEDBEE: What's wrong with the</p> <p>22 form?</p> <p>23 MR. JOLLEY: Well, you're quoting him</p> <p>24 from the transcript about, It was because of the</p> <p>25 breach? The question above doesn't indicate it was</p>



<p style="text-align: right;">Page 1</p> <p>1 UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON AT SEATTLE</p> <hr/> <p>3 FREDRICK and ANNALESA THOMAS; ) 4 and JO-HANNA READ, as ) Guardian ad Litem of E.T., a ) 5 minor, ) 6 Plaintiffs, ) 7 vs. ) 3:15-cv-05346 BJR 8 JASON CANNON; BRIAN MARKERT; ) 9 RYAN MICENKO; MICHAEL WILEY; ) 10 MICHAEL ZARO; CITY OF FIFE; ) CITY OF LAKEWOOD; and PIERCE ) COUNTY METRO SWAT TEAM, ) 11 Defendants. )</p> <hr/> <p>13 DEPOSITION UPON ORAL EXAMINATION OF 14 ZACHARY KENYON</p> <hr/> <p>16 8:53 A.M. 17 JULY 22, 2016 18 18421 VETERANS MEMORIAL DRIVE EAST 19 BONNEY LAKE, WASHINGTON 20 21 22 23 24 REPORTED BY: CINDI ULLMAN, CCR 2687 25</p>	<p style="text-align: right;">Page 3</p> <p>1 I N D E X 2 3 EXAMINATION BY: PAGE(S) 4 MR. FORD 4 5 6 7 8 9 10 11 12 13 EXHIBITS FOR IDENTIFICATION PAGE 14 Exhibit 37 Co-Op Cities Metro Crime Response 4 15 Unit: Interview transcript 16 (Draft) 17 18 19 20 21 22 23 24 25</p>
<p style="text-align: right;">Page 2</p> <p>1 A P P E A R A N C E S 2 3 FOR THE PLAINTIFFS THOMAS: 4 TIMOTHY K. FORD MacDonald Hoague &amp; Bayless 5 705 Second Avenue, Suite 1500 Seattle, WA 98104 6 206.622.1604 timf@mhb.com 7 8 9 FOR THE DEFENDANTS: 10 JEREMY W. CULUMBER Keating, Bucklin &amp; McCormack, Inc., P.S. 11 800 Fifth Avenue, Suite 4141 Seattle, WA 98104 12 206.623.8861 jculumber@kbmlawyers.com 13 14 15 16 ALSO PRESENT: NONE 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 4</p> <p>1 BONNEY LAKE, WASHINGTON; JULY 22, 2016 2 8:53 A.M. 3 --oOo-- 4 5 (Deposition Exhibit 37 was marked for 6 identification.) 7 8 ZACHARY KENYON, 9 sworn as a witness by the Certified Court Reporter, 10 testified as follows: 11 12 EXAMINATION 13 BY MR. FORD: 14 Q. Can you state your name and spell it for the 15 record, please. 16 A. Zachary Kenyon, Z-a-c-h-a-r-y, K-e-n-y-o-n. 17 Q. And where do you work, sir? 18 A. Bonney Lake Police Department. 19 Q. How long have you worked here? 20 A. Two and a half years. 21 Q. And before that? 22 A. Milton Police Department. 23 Q. And how long were you there? 24 A. Ten years. 25 Q. Any police experience prior to that?</p>

Page 21

1 Q. And you were on side 1; is that right?  
 2 A. Correct.  
 3 Q. And was it the window on side 1 that you're  
 4 referring to that he hung his child out?  
 5 A. Correct.  
 6 Q. And do you mean that the child actually went  
 7 out the window; his body was outside the window?  
 8 A. He was outside the window.  
 9 Q. Do you know what he was doing while he was  
 10 doing that?  
 11 A. From what I saw?  
 12 Q. Yeah.  
 13 A. He was holding him out and showing everybody,  
 14 saying, "See, he's okay."  
 15 Q. He wasn't threatening to drop him or throw him  
 16 down or anything like that? Harm him?  
 17 A. Well, I -- I guess in my eyes, I would take  
 18 that as a threat. I mean, any reasonable parent  
 19 wouldn't hang the kid out a window in a second-story  
 20 residence.  
 21 Q. Okay. But -- so it appeared to you to be a --  
 22 A. A threat.  
 23 Q. A threat or a danger? I mean, a threat  
 24 meaning that he's going to do something worse to the  
 25 child or just a danger that he -- what he's doing to

Page 22

1 the child?  
 2 A. I -- I'd -- I'd say it's -- I guess, you could  
 3 consider it both a threat and danger.  
 4 Q. Okay. But the one thing he was doing at  
 5 least, from your perception, was showing the officers  
 6 that the child was okay.  
 7 A. Yes.  
 8 Q. When he was doing that, what was the child  
 9 doing?  
 10 A. I -- after looking back in my notes, I recall  
 11 the child was talking to him, smiling at him.  
 12 Q. Did the child appear to be frightened?  
 13 A. No.  
 14 Q. Did the child appear to be in pain?  
 15 A. No.  
 16 Q. Let's listen a little bit longer.  
 17 A. Okay.  
 18 Q. Ready?  
 19 A. Mm-hm.  
 20 [Audio recording played.]  
 21 Q. (BY MR. FORD) Did you hear that last  
 22 question?  
 23 A. Yes.  
 24 Q. Could you tell from your knowledge of these  
 25 different officers' voices who that was?

Page 23

1 A. It sounded like Derig.  
 2 Q. You were designated Sierra 2 that night; is  
 3 that right?  
 4 A. I don't remember.  
 5 Q. Is -- did you have a regular call handle, or  
 6 whatever you call it, for SWAT operations? It was  
 7 always the same, or did it depend on the operation?  
 8 A. It -- well, it depended on the operation, but  
 9 normally, yeah, we were Sierra units.  
 10 Q. So I'm noticing just right below where we're  
 11 talking, I'm getting a little ahead of us here.  
 12 Markert is saying he's Sierra -- well, he says the word  
 13 "Sierra 1."  
 14 A. Mm-hm.  
 15 Q. Is he identifying himself there?  
 16 A. I believe Markert and I were together on the 1  
 17 side initially, so...  
 18 Q. Okay.  
 19 A. We were together as Sierra 1, I believe.  
 20 Q. Okay. If two of you are in the same spot,  
 21 then you both have the same --  
 22 A. Yes.  
 23 Q. -- call? How is it determined whether you're  
 24 1 or 2, or does that have any significance to the other  
 25 officers?

Page 24

1 A. It's -- it depends on who shows up on scene  
 2 first, what sniper shows up on scene first.  
 3 Q. Okay. Let's listen; maybe we can hear it.  
 4 [Audio recording played.]  
 5 Q. (BY MR. FORD) When you -- do you remember the  
 6 AT moving around at the back side of the house? Were  
 7 you able to see that?  
 8 A. I don't remember.  
 9 Q. Do you remember if you were able to hear the  
 10 AT move into the backyard and go across the fence?  
 11 A. Yes.  
 12 Q. Did that make a noise and the fence go down?  
 13 A. Yes.  
 14 Q. About how far in front of the side 1 of the  
 15 house were you? What was your distance?  
 16 A. I'd have to say probably -- maybe 40, 50  
 17 yards. I was across the street under a carport.  
 18 Q. So there was a front yard of the house --  
 19 A. Mm-hm.  
 20 Q. -- of Leonard Thomas and then the street and  
 21 then there was a carport off the street on the other  
 22 side?  
 23 A. Correct. There was a driveway up where the  
 24 carport.  
 25 Q. And I think we've got pictures at the back of

<p style="text-align: right;">Page 53</p> <p>1 I didn't want my barrel down range at them.</p> <p>2 Q. Did you see any of the officers enter through</p> <p>3 the front door?</p> <p>4 A. No, I don't -- I don't remember.</p> <p>5 Q. So did you see whether Leonard was actually in</p> <p>6 physical contact with Elijah at the time Officer</p> <p>7 Markert took his shot?</p> <p>8 A. No, I did not.</p> <p>9 Q. When Leonard moved toward Elijah, could you</p> <p>10 see his facial expressions?</p> <p>11 A. He looked startled when -- obviously, when the</p> <p>12 breach went. That's about it.</p> <p>13 Q. Did you ever talk to Markert about what had</p> <p>14 led him to make the decision to take the shot?</p> <p>15 A. No, I didn't.</p> <p>16 Q. Down on the bottom of page -362 of your</p> <p>17 statement, pages 8 -- or lines 848 through -9... Well,</p> <p>18 actually, let's move up a little bit. You say at line</p> <p>19 843, He got up -- that's Leonard got up, right?</p> <p>20 A. Mm-hm.</p> <p>21 Q. -- ran straight for the kid. Grabbed him,</p> <p>22 started -- basically guarded him in, into the</p> <p>23 residence.</p> <p>24 What do you mean by basically guarded him into</p> <p>25 the residence?</p>	<p style="text-align: right;">Page 55</p> <p>1 A. No, I don't.</p> <p>2 Q. Do you know these individuals that are named</p> <p>3 at the top, Tom Yalbee, Shelby Wilcox? Do you know</p> <p>4 either one of those?</p> <p>5 A. No.</p> <p>6 Q. And do you recall anyone being present for the</p> <p>7 interview that you did know?</p> <p>8 A. I can't recall.</p> <p>9 Q. Is this the only time you've had an</p> <p>10 after-action interview with the SWAT team?</p> <p>11 A. No.</p> <p>12 Q. There have been other -- other times even when</p> <p>13 there are not shots fired?</p> <p>14 A. Well, no. Not with the -- I mean, I had --</p> <p>15 the one I had was with the officer-involved shooting</p> <p>16 that I had.</p> <p>17 Q. Right. I'm sorry. Of course, other than that</p> <p>18 one. But that was a little different because you were</p> <p>19 the shooter and so it was --</p> <p>20 A. Right.</p> <p>21 Q. -- with the prosecutor and whoever.</p> <p>22 A. Right.</p> <p>23 Q. Right. But --</p> <p>24 A. But this one, yes.</p> <p>25 Q. This is the only time this happened?</p>
<p style="text-align: right;">Page 54</p> <p>1 A. Well, I don't -- I don't -- I don't</p> <p>2 remember -- like I said, I don't remember seeing him</p> <p>3 because that bush was in the way.</p> <p>4 Q. Was it your impression that when Leonard was</p> <p>5 moving toward Elijah one of the things he was trying to</p> <p>6 do was to guard him from the explosion or what was</p> <p>7 happening around him?</p> <p>8 A. No.</p> <p>9 MR. FORD: Let's see if I can... Why</p> <p>10 don't we take a break for a couple of minutes while I</p> <p>11 try and set this up.</p> <p>12 THE WITNESS: Okay.</p> <p>13 MR. FORD: Okay. Thanks.</p> <p>14 (Recess taken.)</p> <p>15 MR. FORD: Back on.</p> <p>16 Q. (BY MR. FORD) Exhibit 37, again, is your</p> <p>17 interview transcript. Can you take a look at the first</p> <p>18 page of the actual interview, -344. Down at the</p> <p>19 bottom, it says this is being audio/video recorded with</p> <p>20 your permission.</p> <p>21 A. Yep.</p> <p>22 Q. Do you remember -- did they have video where</p> <p>23 you were? Do you remember that?</p> <p>24 A. I don't remember it.</p> <p>25 Q. Do you remember where this occurred?</p>	<p style="text-align: right;">Page 56</p> <p>1 A. Yes.</p> <p>2 Q. Okay. And they -- they don't conduct these</p> <p>3 kind of interviews unless there's shots fired, I</p> <p>4 assume, or somebody injured?</p> <p>5 A. Correct.</p> <p>6 Q. Okay. So let's just go back to the place</p> <p>7 where we were here, which was... Okay, page -362. And</p> <p>8 I just want to play the recording here, and let me just</p> <p>9 ask you to -- to tell me if the transcript is accurate</p> <p>10 at this portion. I think it's going to start at line</p> <p>11 827.</p> <p>12 A. Okay.</p> <p>13 [Audio recording played.]</p> <p>14 Q. (BY MR. FORD) Okay. Did you see anything</p> <p>15 there that was not transcribed accurately?</p> <p>16 A. No.</p> <p>17 Q. And that's down through lines 854?</p> <p>18 A. Correct.</p> <p>19 Q. On page -362. Is that right?</p> <p>20 A. Yes.</p> <p>21 Q. So do you know if this interview occurred</p> <p>22 after the tactical debrief that you described, or would</p> <p>23 have the tactical debrief occurred after this</p> <p>24 interview?</p> <p>25 A. I believe the interview was after the debrief.</p>





<p style="text-align: right;">Page 1</p> <p>1 UNITED STATES DISTRICT COURT 2 WESTERN DISTRICT OF WASHINGTON AT SEATTLE 3 4 _____ 5 ) 6 FREDRICK and ANNALESA THOMAS; ) and JO-HANNA READ, as Guardian ) 7 ad Litem of E.T., a minor, ) 8 ) 9 Plaintiffs, ) 10 ) 11 vs. ) 3:15-cv-05346 BJR 12 ) 13 JASON CANNON; BRIAN MARKERT; ) RYAN MICENKO; MICHAEL WILEY; ) 14 MICHAEL ZARO; CITY OF FIFE; ) CITY OF LAKEWOOD; and PIERCE ) 15 COUNTY METRO SWAT TEAM, ) 16 ) 17 Defendants. ) 18 19 DEPOSITION UPON ORAL EXAMINATION OF 20 MARK EAKES 21 22 1:56 P.M. 23 MARCH 29, 2016 24 3737 PACIFIC HIGHWAY EAST 25 FIFE, WASHINGTON</p> <p>26 REPORTED BY: SHARI L. WHEELER, CCR NO. 2396</p>	<p style="text-align: right;">Page 3</p> <p>1 I N D E X 2 3 EXAMINATION BY: PAGE 4 MR. WHEDBEE 4 5 6 7 EXHIBITS FOR IDENTIFICATION PAGE 8 (Exhibits 1 through 9 were previously marked.) 9 Exhibit 10 Photograph of the white board used 32 10 during the incident with Mr. Thomas 11 Exhibit 11 Transcript of interview 41 12 13 EXHIBITS PREVIOUSLY MARKED AND REFERRED TO 14 Exhibit 6 Hand-drawn map 20 15 16 17 18 19 20 21 22 23 24 25</p>
<p style="text-align: right;">Page 2</p> <p>1 A P P E A R A N C E S 2 3 FOR THE PLAINTIFFS: 4 DAVID J. WHEDBEE TIMOTHY K. FORD 5 MacDonald Hoague &amp; Bayless 705 Second Avenue, Suite 1500 6 Seattle, Washington 98104 206.622.1604 7 davidw@mhb.com timf@mhb.com 8 9 FOR THE DEPONENT: 10 JEREMY W. CULUMBER Keating, Bucklin &amp; McCormack, Inc. P.S. 11 800 Fifth Avenue, Suite 4141 Seattle, Washington 98104 12 206.623.8861 jculumber@kbmlawyers.com 13 14 FOR DEFENDANT CITY OF FIFE: 15 F. HUNTER MACDONALD VSI Law Group, PLLC 16 225 Tacoma Avenue South Tacoma, Washington 98402 17 253.922.5464 hunter@vsilawgroup.com 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 4</p> <p>1 FIFE, WASHINGTON; MARCH 29, 2016 2 1:56 P.M. 3 --oOo-- 4 5 MARK EAKES, 6 sworn as a witness by the Certified Court Reporter, 7 testified as follows: 8 9 EXAMINATION 10 BY MR. WHEDBEE: 11 Q. Sergeant Eakes, thank you for coming this 12 afternoon. My name is David Whedbee. I'm here with 13 Tim Ford. We both represent Fred and Annalesa Thomas 14 in this matter. 15 Have you ever been deposed before? 16 A. I have. 17 Q. In which case? 18 A. The last one was an employment dispute with the 19 Lakewood Police Department. 20 Q. Were you deposed in another case, besides that? 21 A. Yes. 22 Q. What was that? 23 A. It was a criminal case involving a suspect that 24 went to prison. 25 Q. Was it a civil suit or just a --</p>

<p style="text-align: right;">Page 21</p> <p>1 MR. WHEDBEE: Do you know, Jeremy? Sorry.</p> <p>2 MR. CULUMBER: 55th is the house --</p> <p>3 THE WITNESS: Yeah.</p> <p>4 MR. CULUMBER: 54th? Is that the --</p> <p>5 THE WITNESS: Yeah. 54th.</p> <p>6 Q. (BY MR. WHEDBEE) Do you mind writing that in?</p> <p>7 A. That is a map on paper and somebody's freehand</p> <p>8 sketch, so --</p> <p>9 Q. We won't hold you to it.</p> <p>10 A. Okay. I appreciate it. It would be six to</p> <p>11 seven houses, I believe, to the -- this would be south,</p> <p>12 I believe, here.</p> <p>13 Q. Okay.</p> <p>14 A. So I don't know. I'm just going to take a stab</p> <p>15 in the dark.</p> <p>16 Q. And maybe put "NR" for negotiation rig.</p> <p>17 A. Sure.</p> <p>18 Q. From that position, do you have any visual</p> <p>19 perspective on the house?</p> <p>20 A. No.</p> <p>21 Q. Was Chief Zaro ever in the negotiation rig with</p> <p>22 you?</p> <p>23 A. Yes.</p> <p>24 Q. Was he there a lot? Was he there occasionally?</p> <p>25 Did he come back and forth?</p>	<p style="text-align: right;">Page 23</p> <p>1 A. Again, I don't recall anybody talking to me</p> <p>2 before I arrived on the scene.</p> <p>3 Q. I'm sorry. My question was unclear.</p> <p>4 When you arrived at the scene, who debriefed</p> <p>5 you on what had been going on at the scene before you</p> <p>6 arrived?</p> <p>7 A. Sure. It would've been -- I met with Officer</p> <p>8 Luckman, or Sergeant Luckman, with Milton, and</p> <p>9 Lieutenant Thompson with Fife.</p> <p>10 Q. And what did you understand from Sergeant</p> <p>11 Luckman, as far as what you were dealing with? Very</p> <p>12 generally, tell me everything that he was telling you.</p> <p>13 A. Sergeant Luckman had already been talking to</p> <p>14 him. Again, he was a trained prior negotiator, and he</p> <p>15 had a -- I think a significant or extended conversation</p> <p>16 with him before we arrived. And he was -- the</p> <p>17 information I was given was that he was hostile, upset.</p> <p>18 He might have been intoxicated. There was a mention</p> <p>19 that he might possibly have a gun; that he had, at one</p> <p>20 point, put his child out the window -- or "hung him out</p> <p>21 the window," I think is the way it was stated.</p> <p>22 Q. Anything else?</p> <p>23 A. I'm sorry?</p> <p>24 Q. Anything else?</p> <p>25 A. Oh, I'm sorry. I don't recall at this point.</p>
<p style="text-align: right;">Page 22</p> <p>1 A. Back and forth.</p> <p>2 Q. Was he there during -- when you were on the</p> <p>3 phone with Mr. Thomas, was it on a speakerphone?</p> <p>4 A. There were times it was and maybe times it</p> <p>5 wasn't.</p> <p>6 Q. Was Chief Zaro present when Mr. Thomas was on</p> <p>7 speakerphone in the negotiation rig?</p> <p>8 A. I believe towards the end, he was. But I don't</p> <p>9 have specific times.</p> <p>10 Q. Okay. Do you know where Chief Zaro would go</p> <p>11 when he wasn't in the negotiation rig?</p> <p>12 A. No.</p> <p>13 Q. There was no particular place that you knew him</p> <p>14 to be? I know he may have moved around somewhat. But</p> <p>15 was he positioned in someplace that you knew?</p> <p>16 A. He would be -- I don't know exactly where he</p> <p>17 went. He would be relatively close to the command post</p> <p>18 or at the command post, which was that general area.</p> <p>19 Q. And where was the command post?</p> <p>20 A. That was it. We'd all park in that same area.</p> <p>21 Q. I got it. Okay.</p> <p>22 When you first arrived there, who debriefed you</p> <p>23 on what had happened before you arrived?</p> <p>24 A. I'm sorry. Before I arrived?</p> <p>25 Q. Uh-huh.</p>	<p style="text-align: right;">Page 24</p> <p>1 Q. Did Sergeant Luckman mention anything about</p> <p>2 Leonard's mental illness or bipolar disorder?</p> <p>3 A. Thank you. Yes. There was a mention that he</p> <p>4 might possibly be bipolar.</p> <p>5 Q. Anything about being on or off meds?</p> <p>6 A. I don't recall.</p> <p>7 Q. What did you do to prepare for today's</p> <p>8 deposition?</p> <p>9 A. What did I prepare for today?</p> <p>10 Q. How did you prepare for today's deposition?</p> <p>11 A. I read my statement that I gave to detectives</p> <p>12 the night in question here one time.</p> <p>13 Q. Did you read any other statements?</p> <p>14 A. No.</p> <p>15 Q. During your course of conversation with</p> <p>16 Mr. Thomas, what did you conclude about whether or not</p> <p>17 he had a gun?</p> <p>18 A. I did not know. I asked him that, and he said</p> <p>19 no.</p> <p>20 Q. Did you ask him that once or many times?</p> <p>21 A. I asked him more than once. I don't know how</p> <p>22 many times.</p> <p>23 Q. Did he always say that he did not have a gun?</p> <p>24 A. Yes.</p> <p>25 Q. Did you hear information from any other source</p>

Page 25

1 about family members and whether they believed he had a  
 2 gun?  
 3 A. No.  
 4 Q. Did you ask?  
 5 A. I was negotiating. I didn't ask other family  
 6 members.  
 7 Q. So in your communications with Chief Zaro, he  
 8 was not providing you with information that he was  
 9 learning from either other police officers or family  
 10 members?  
 11 A. No. That's not -- he doesn't interview family  
 12 members. He's running a command and SWAT team at the  
 13 time.  
 14 Q. I understand that he might not interview them  
 15 himself. But he's the conduit of information, isn't  
 16 he, between his subordinate officers and you?  
 17 A. He's in charge of the scene.  
 18 Q. Is he the conduit of information between his  
 19 subordinate officers and you?  
 20 A. You'd have to clarify or be more specific.  
 21 Q. Okay. If something is going on outside the  
 22 negotiation rig that Chief Zaro thinks you need to  
 23 know, is he the one that communicates that?  
 24 A. He could be one of the people that will give us  
 25 information.

Page 26

1 Q. Well, how else does it happen?  
 2 A. Tom Thompson was the intel person. So he might  
 3 have interviewed people, too, and any other sources  
 4 that we could get information from.  
 5 Q. Describe what an intel person does.  
 6 A. They're generally going to try to get exactly  
 7 that, intelligence, and the history and what had  
 8 happened, you know, during that incident. He may have  
 9 interviewed family members and gathered that intel. He  
 10 will decipher it and pass it on.  
 11 Q. Okay. Did you hear from Lieutenant Thompson  
 12 that there had been any discussion with family members  
 13 about whether or not Leonard Thomas had a gun?  
 14 A. I am sure he talked to somebody. I don't  
 15 recall the conversation and what was passed on at this  
 16 point.  
 17 Q. With respect to Leonard's interactions with his  
 18 child, what did you understand about any potential  
 19 threats that Leonard made to his child?  
 20 A. Other than hanging him out the window?  
 21 Q. Is that the only one?  
 22 A. The fact that he wouldn't let the child go. He  
 23 was hostile. He showed a propensity for violence.  
 24 Q. So he showed a propensity for violence. What  
 25 kind of --

Page 27

1 A. Well, he did act out in violence, I should say.  
 2 Q. When?  
 3 A. When he struck his mother.  
 4 Q. How did he strike his mother?  
 5 A. I don't have that information in front of me.  
 6 But she's the one that made the first initial 911 call  
 7 of being assaulted.  
 8 Q. Did you find out exactly what was alleged that  
 9 he had done?  
 10 A. That she was struck. I established that there  
 11 was probable cause for his arrest for assault.  
 12 Q. Did you find out where she was struck?  
 13 A. No.  
 14 Q. Did you ask?  
 15 A. No.  
 16 Q. Did you believe that it was important to find  
 17 out whether Mr. Thomas had a propensity for violence?  
 18 A. He did show a propensity for violence and  
 19 through his criminal history, too, I found out.  
 20 Q. But you didn't do anything to determine the  
 21 particulars of the criminal history or the alleged  
 22 assault with his mother?  
 23 A. Say that again, please.  
 24 Q. Did you do anything to find out the particular  
 25 information about the alleged assault with his mother?

Page 28

1 A. No. Probable cause had been established  
 2 already. And so that's what I was finding out: if he  
 3 was going to be arrested and what it would be for.  
 4 Q. If you're dealing with a subject in this kind  
 5 of situation, once you figure out that there's probable  
 6 cause to believe that he, in this case, made an  
 7 assault, you don't inquire anymore about the nature of  
 8 that assault?  
 9 A. It was a misdemeanor, Assault 4, domestic  
 10 violence, which would tell me that there was not a  
 11 weapon involved in that particular assault at that  
 12 time.  
 13 Q. Did you ever learn that Annalesa Thomas had  
 14 struck Leonard?  
 15 A. I did not hear that.  
 16 Q. And what did you find out about Mr. Thomas'  
 17 criminal background, as you put it, that led you to  
 18 believe that he had a propensity for violence?  
 19 A. A drive-by shooting in 2008 and a conviction.  
 20 Q. Did you find out any particulars about that?  
 21 A. No. There was a conviction.  
 22 Q. I had originally asked what Leonard displayed  
 23 as far as a threat to his child. And you said, his  
 24 criminal history. How does that correlate?  
 25 A. I might have misspoke. I thought I said that

<p style="text-align: right;">Page 29</p> <p>1 he hung his child out the window of the house.  2 Q. Then you said he had a propensity for violence,  3 and he had a criminal history. So I was trying to  4 figure out how those two ideas correlate with the  5 idea --  6 A. The assault on his mother was a violent  7 assault. Anytime you strike somebody, that's  8 considered violence. And then his criminal history,  9 which I've already stated, was a drive-by shooting that  10 he had a conviction for.  11 Q. And I'm trying to figure out, how does that  12 correlate with there being a threat to the child?  13 A. Because he's -- it shows a propensity for  14 violence, and he's not letting -- we've asked him to  15 let the child go, and he's refusing to do so.  16 Q. Were there any particular threats to the child,  17 aside from this background information that you --  18 A. Besides hanging the child out the window?  19 Q. Besides that, yeah.  20 A. None that he directly gave me.  21 Q. And how did you know that he had hung the child  22 out the window?  23 A. That was part of my initial briefing when I got  24 there.  25 Q. Who briefed you on that issue?</p>	<p style="text-align: right;">Page 31</p> <p>1 Q. Yes. And that Leonard then raised the child to  2 show Sergeant Luckman --  3 A. It's hard to answer without knowing the  4 correlation and the time frame between when he hung the  5 child out the window and when he asked that question.  6 So it's all on assumptions, and I'm only theorizing at  7 that point.  8 Q. Okay. When you say that probable cause had  9 been established, do you mean that he had committed  10 Assault 4? Is that what you were describing?  11 A. Yes.  12 Q. Was there anything that you personally observed  13 that led you to believe that there was probable cause  14 that Leonard committed a crime?  15 A. I was there after the fact of the crime.  16 Q. I know that.  17 A. So did I -- I couldn't have personally observed  18 it, then, if I wasn't there.  19 Q. I'm asking you, from the time that you arrived,  20 did you observe anything with Leonard that gave you  21 probable cause to believe that a crime had been  22 committed? Not the Assault 4. Any other crime?  23 A. An additional crime?  24 Q. Yes.  25 A. No.</p>
<p style="text-align: right;">Page 30</p> <p>1 A. It would've been either Officer -- sorry --  2 Lieutenant Thompson or Sergeant Luckman.  3 Q. Did Sergeant Luckman tell you anything about  4 the context of that episode at the window?  5 A. As far as how he was hung out the window?  6 Q. Just, generally, the context of that incident?  7 A. That's the general context, as I understood it.  8 A small child was hung out the window by his father.  9 Q. Did Sergeant Luckman tell you that he had asked  10 Leonard -- that he needed to see the child. And then  11 Leonard raised up the child to show that he was okay?  12 A. I don't recall that.  13 Q. Is that something that you would have wanted to  14 know?  15 A. It may or may not have happened. I don't  16 recall it sitting here today.  17 Q. Let's assume that it happened. Is that some  18 information that you would want to know?  19 A. Assuming -- I'm sorry. We're going on  20 assumptions? Go ahead.  21 Q. Let's assume that the context that I just  22 articulated -- let's assume that that occurred. Is  23 that some information that you would want to know from  24 Sergeant Luckman?  25 A. That he asked him to show the child?</p>	<p style="text-align: right;">Page 32</p> <p>1 Q. When you were talking on the phone with  2 Leonard, did he ever make any threats to the child?  3 A. No.  4 Q. When you were talking on the phone with  5 Leonard, did he make any threats to any of the  6 officers?  7 A. I did not hear that. No.  8 Q. When you were on the phone with Mr. Thomas, did  9 he make any threats to himself?  10 A. No.  11 Q. Or that he would harm himself in some way?  12 A. No.  13 Q. When you were speaking with Leonard, did he  14 give you any indication that he had a weapon?  15 A. No.  16 Q. Did you communicate everything that I just  17 asked you about what you personally observed -- did you  18 communicate that to Chief Zaro?  19 A. I couldn't sit there and go bullet by bullet,  20 that we discussed every one of those. But we did  21 communicate the general context of what we're talking  22 about.  23 (Deposition Exhibit 10 was marked for  24 identification.)  25 Q. (BY MR. WHEDBEE) A few minutes ago, you</p>

Page 69

1 review meeting, but you can't remember attending the  
 2 other debrief?  
 3 A. Sitting in front of you right now, no. But  
 4 I've attended a lot of debriefs and different things  
 5 like that.  
 6 Q. Apart from the debrief, did you hear, among  
 7 your fellow SWAT members, any criticisms about how the  
 8 incident was handled?  
 9 A. No. There was confusion on, I think, a couple  
 10 of -- you know, specifics, I don't know what they were  
 11 exactly disputing, if there was a dispute, or just a  
 12 misunderstanding. You would have to ask them.  
 13 Q. So you never heard any criticisms raised by  
 14 Officers Waller or Kiplinger{phonetic} -- I'm not sure  
 15 how to pronounce his name.  
 16 A. Specifically, I don't remember them or their  
 17 statements about what they would have said.  
 18 Q. During your conversations with Leonard before  
 19 the shooting, did you ever hear him interact with  
 20 Elijah?  
 21 A. Did I ever hear him do what with Elijah?  
 22 Q. Interact with Elijah while you were on the  
 23 phone with Leonard?  
 24 A. Yes. He woke him up at one point, and then I  
 25 spoke to Elijah.

Page 70

1 Q. How did Elijah sound to you?  
 2 A. He sounded okay, fine.  
 3 Q. Any signs of distress?  
 4 A. I could not detect any. No.  
 5 Q. Did he seem happy?  
 6 A. Yeah. I mean, it's a four-year-old boy. So I  
 7 think his knowledge and understanding of events is  
 8 probably somewhat limited at four.  
 9 Q. Well, you can still be happy at four, can't  
 10 you?  
 11 A. Sure. And you can still not understand what's  
 12 happening around you.  
 13 Q. That's fine. But I didn't ask that question.  
 14 I asked whether --  
 15 A. Yeah. I was just answering it, though.  
 16 Q. Okay. So was he laughing? Was he joking?  
 17 A. No. He was just talking, as we're talking now.  
 18 Q. What did Elijah tell you?  
 19 A. Excuse me?  
 20 Q. What did Elijah say to you?  
 21 A. I'd have to look at the statement. I think he  
 22 said he -- I asked him how he was doing, and he said he  
 23 was fine. I think there was some mention of getting  
 24 him ready or pajamas or something like that.  
 25 Q. What did he say? So you asked him if he was

Page 71

1 getting in as pajamas, and he --  
 2 A. There was some mention of that. I don't  
 3 remember. If you want me to look at that part -- I  
 4 know it's in the statement here somewhere -- I can  
 5 refresh my memory with it.  
 6 Q. Did you hear Leonard say anything to Elijah?  
 7 A. Did I hear Leonard say anything to Elijah?  
 8 Q. Yes.  
 9 A. I want to say yes, but I can't recall. I think  
 10 it was about getting ready, or get your pajamas on, or  
 11 something to that effect. It would be easier if I just  
 12 looked at my statement. I could probably help you  
 13 better.  
 14 Q. Get your pajamas on because he was going to go  
 15 to bed or because he was going to be --  
 16 A. Well, he might have already had his pajamas on.  
 17 There was some talk about pajamas. I just can't  
 18 remember without looking at my statement.  
 19 Q. Was Leonard telling Elijah to get ready to go,  
 20 to leave the house?  
 21 A. He was saying he was going to get him up to get  
 22 ready.  
 23 Q. For what?  
 24 A. To surrender. He was going to take him outside  
 25 or let him come to us.

Page 72

1 Q. And this conversation occurred roughly how long  
 2 before Leonard was shot?  
 3 A. Again, it would just be a guess, for the  
 4 record. But I'm thinking probably within 20 to 30  
 5 minutes before, you know, he came out -- or started to  
 6 come out and went back -- back and forth.  
 7 Q. What was Leonard's tone with his child?  
 8 A. He was still upset. He would go from being  
 9 monotone and calm to being volatile and upset.  
 10 Q. And my question was, what was Leonard's tone  
 11 when he was speaking to Elijah?  
 12 A. Oh, Elijah. Okay. I apologize. I think he  
 13 was very calm.  
 14 Q. In the negotiation rig, did you have the  
 15 capacity to record calls with the person that you're  
 16 talking to on the other side?  
 17 A. No. I was missing, I believe, a piece of  
 18 equipment at the time. We had a throw phone, but we  
 19 didn't use that. It was through a cell phone.  
 20 Q. What's a throw phone?  
 21 A. Good question. It's basically a -- what we  
 22 call a "throw phone." It's connected to a cable, and  
 23 it's kind of like the old fashion way of having two  
 24 cans and a string. I've got a phone on my end. You've  
 25 got a phone. And one line is connected in between.





right/rear on the other side of the parked car. I used a picnic table and chairs to build a hide location, allowing me to stabilize my rifle so that I could provide constant observation and intelligence updates on the front upstairs window and the suspect's movement up/down the stairs. I used my laser rangefinder to determine that Officer Kenyon was approximately 50 yards from the front of the house and I was approximately 57 yards from the suspect's residence. ATL J. Cannon was coordinating the officers on the back, or "three side" of the house. I conferred with him by radio and told him that I was going to remain with Officer Kenyon to assist him in covering the front of the house unless there was a distinct need for sniper coverage for the rear of the house.

Officer Kenyon and I were designated as "Sierra-1" during radio communications, as we were covering the "one side" of the house. As I observed the front side of the house, there was constant activity from inside the home. The front/upstairs window's blinds were raised, allowing me to see inside that room. The suspect came to the window numerous times, yelling out the open window towards entry officers at the Bearcat. I could clearly hear most of his yelling as he cursed at officers. He sounded agitated and impaired, telling officers that he had done nothing wrong and that we were not allowed to "trespass" on his property and that we needed to leave.

The only adult I saw in the house during the entire callout was a perfect match for the physical description of the suspect, as provided by A/C Zaro and negotiators.

Initially, entry officers in the vicinity of the Bearcat were speaking directly to the suspect. He was yelling and cursing at them, and they were asking him to release the hostage and to surrender. A/C Zaro or the negotiators radioed the team, asking that they not communicate directly with the suspect as negotiators were trying to get him to answer the phone.

Over the next several hours, the suspect appeared at the upstairs window intermittently, waving his arms and gesturing wildly as he yelled about his hatred of the Fife Police, cursing at officers and demanding that we should just leave as he insisted he had not committed a felony. The suspect warned officers 'I have a four year old in here. Don't be smashing in my door, using your stun grenades and tear gas or blowing my door off the hinges.' He warned officers that if they attempted to force entry into his home, the four year old hostage was going to get hurt. These warnings from the suspect indicated to me that he had a working knowledge of SWAT tactics and that he may be willing to sacrifice the safety - and possibly the life - of his son to delay or evade arrest if police entered his home.

At one point, the suspect brought the hostage to the front/upstairs window, shielding himself behind the child as he pushed the hostage up to the open window frame. I could

son. As officers called to the hostage, asking him to come to them, the suspect yelled back at officers, telling them that he wasn't going to let his son leave. He said that he was the boy's father and that the child would only listen to him. Moments later, I could see the dog's feet and partial view of the dog as the dog came into view. The suspect was goading the dog to attack officers, I could hear the suspect saying "Go get 'em! Get 'em!" and as the dog stepped toward the yard and in the direction of officers near the Bearcat, in an aggressive manner the suspect said 'Good dog!'

Suddenly, the suspect grabbed the hostage and pulled him back inside the house and closed the door. TL Wiley radioed that we had lost the opportunity to secure the hostage. I went over to Officer Kenyon and asked him what kind of view/exposure of the suspect he had while the suspect was out on the front stoop, crouched behind the hostage. Officer Kenyon said he could see the suspect and had a clear view of his head at one point before the suspect pulled the hostage back inside.

My location did not allow me to cover the front door if the suspect returned to the entrance with the hostage. I told Officer Kenyon I was going around the corner to the alternate position and I ran around the barn. I raised the stabilizing bars on the RV and mounted my rifle on the field rest. I called out to officers at the Bearcat, to notify them that I was behind them, so that they would know not to cross into my observation lane without warning me.

During the callout, TL Wiley had established a tactical plan in case an emergency or deliberate entry was necessary to rescue the hostage. This plan was relayed to team members over the SWAT-2 radio channel by TL Wiley. Team breachers had built an explosive breaching charge to defeat the rear door of the house. ATL Cannon's entry team would be staged on the "Four Side" of the house, prepared to enter the rear door once the explosive breach was initiated. Officers staged at the Bearcat or near the front of the house would be responsible for breaching the front door and entering the house through that entrance. If the hostage was outside the front door to the home, the intent was for the explosive breach to be enough of a distraction to the suspect that officers from the Bearcat would be able to snatch the hostage off the front stoop before the suspect had a chance to react. ATL Cannon's team would enter the house through the rear door and contact the suspect inside to prevent him from bringing the hostage back inside if officers from the Bearcat had not already done so.

As I continued to cover the front door, I heard someone say that the suspect had now agreed to release the hostage, but only to his mother (the child's grandmother). I heard a commotion from the direction of the command post. Two negotiators were walking the mother northbound towards the suspect's residence. The suspect suddenly opened the door again, guiding the hostage onto the stoop, where the child sat down. The suspect

exposed, right side of the suspect's torso that would not endanger the hostage. I discharged one round from my rifle in an effort to incapacitate the suspect before he was able to retreat inside the residence with the hostage. I immediately cycled the action of my rifle, chambering a fresh cartridge as the rifle recoiled, in case a follow-up shot was required. When my scope settled back on the doorway, I could no longer see the suspect or the hostage nor could I see inside the house.

I heard an officer yell "Shots fired!" and 'That was the snipers!' The plan called for officers to be nearing both doors/breach points and entering the home, so I pointed the barrel of my rifle away from the front door of the house and raised the bolt handle, unlocking the action to render the rifle "safe" as I continued to observe the front of the house. I saw officers in the area of the front door and then I heard several gunshots that sounded like they came from the area of the front door, or possibly inside the home.

I heard a female voice screaming from the area of the rear of the Bearcat. Several moments after my shot, I saw a negotiator, Officer Malave from Fife PD, crossing the lawn with the juvenile hostage in his arms. The negotiator made his way to the street and jogged southbound, towards the negotiator van and command post, carrying the child.

TL Wiley radioed that there had been shots fired, that the suspect was injured and that they had rescued the hostage. TL Wiley requested medics to respond to the home and for an ambulance to stage forward. As the hostage had been removed from the home and the suspect had been contacted inside, I decided to secure my firing location for investigators. I put the rifle on the ground with the bipod legs extended. I opened the action to my rifle, removed the magazine from the magazine well and the live cartridge from the chamber. I unloaded the magazine to confirm that there were three additional rounds loaded in the magazine. I reloaded all four rounds into in the magazine and inserted the magazine back into the magazine well; I left the action open so that chamber remained empty. I used a flashlight to look in the bushes and found the expended brass casing under the shrubs, adjacent to where I was standing; I never touched or moved the expended brass casing.

Several minutes later, I saw several officers exit the front door to the house, carrying a fabric stretcher holding the suspect; they moved down the block to a waiting ambulance. TL Wiley came outside and called out to me, asking if I was all right. I responded that I was and that I would remain at my firing location until relieved. Officer Kenyon came to my location and checked on me. I showed him where my expended brass casing was located and then asked him to retrieve my backpack from the carport.

Several other entry team members stopped by, staying outside the shrubs, to check on my welfare. They notified me that my shot had seriously wounded the suspect and that the

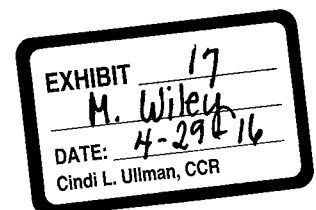


## Co-Op Cities Metro Crime Response Unit

This transcript was prepared by a third party that did not participate in the interview. It is a draft only as it has not been verified for complete accuracy. Only the audio/video file should be considered a true, complete and accurate record of the interview.

Subject of Interview: Ofc. Mike Wiley

Interviewer(s): Det. Ray Punzalan, Det. Tamera Pihl and Investigator Keith Barnes



INTERVIEW WITH MICHAEL WILEY  
Interviewer: Det. (Ray Penzon)  
05-24-13/6:03 pm  
Case # 13-1984  
Page 37

1612  
1613 Q: Okay. Ih so, do - (Zorro) directs you not to bring the kid...  
1614  
1615 A: He's not allowed to bring the kid inside, unfortunately that was the first time,  
1616 he was - he snatched that kid real quick and got inside and we said, "Fuck we  
1617 missed our opportunity." You know it was a gutsy call, um, but again like I  
1618 said, I don't know what triggered this guy, he didn't - there was actually no  
1619 sound. There was no - we didn't do anything. We didn't move. The Side 3  
1620 team moved but...  
1621  
1622 Q: But something hinked him up.  
1623  
1624 A: Something, I don't know what it was but he just grabbed the kid and said fuck  
1625 this, and went back inside, and we went dammit.  
1626  
1627 Q1: So, I'm sorry, was that the first - the first time he went back inside or was  
1628 this...  
1629  
1630 A: I don't remember if it was the first time or the second time.  
1631  
1632 Q1: So it wasn't this time.  
1633  
1634 A: I - I...  
1635  
1636 Q1: Did he bring him back inside when the kid's out on the sidewalk and (Zorro)  
1637 made that decision?  
1638  
1639 A: He made it on the - so that would have been the first time.  
1640  
1641 Q1: Okay.  
1642  
1643 A: That would have been on the first time, hey he's not going back in there or  
1644 something like that.  
1645  
1646 Q1: Okay, okay.  
1647  
1648 A: So something is going on. They're hearing something that we're not hearing  
1649 on the - on negotiations.  
1650  
1651 Q1: Mm-hm.  
1652  
1653 A: So now it's like, okay check out real - real quick, because that's you know,  
1654 every SWAT guy likes to hear, "Hey, he's not free to move," or "He's not...  
1655  
1656 Q: Right.



INTERVIEW WITH MICHAEL WILEY

Interviewer: Det. (Ray Penzon)

05-24-13/6:03 pm

Case # 13-1984

Page 38

1657  
1658 A: He's not referred to (unintelligible). But th-that's pretty clear guidance for us.  
1659  
1660 Q1: Right.  
1661  
1662 A: Um, he's, he's a lethal threat. But like anything else, you know, if we can take  
1663 him peacefully, fuck yeah. Uh because, you know, none of our guys, I don't  
1664 want to put any of my guys through this stuff. So we missed that opportunity  
1665 and now I'm like, "Okay I'm not going to miss another opportunity." He got,  
1666 you know, like I said, like that far apart and I'm like, "Mm-mm, this is gonna  
1667 happen here. We're gonna be able to move him forward." But then the kid  
1668 starts - because at this time he had already taken the car seat out and put it on  
1669 the porch.  
1670  
1671 Q: Okay.  
1672  
1673 A: Before the kid got all the way that far. I'm like, "Oh, sweet, this might have a  
1674 great ending." And then he threw I don't know maybe it was a Laker bag, I  
1675 don't know what it was. It was something else, besides the car seat there was  
1676 something else that came out. So like, "Hey grandma is going to pick it up."  
1677 Or I guess he was going to leave it because he was whacked out, he was  
1678 weird.  
1679  
1680 Q: (Unintelligible) attitude?  
1681  
1682 A: Yeah I mean he was just, it just - there was no rhyme or reason what he was  
1683 doing. So we're constantly adjusting on him.  
1684  
1685 Q: And those - and those advisories, any indication that mental health stuff was  
1686 articulated in the (unintelligible)?  
1687  
1688 A: There was something um, but I - I couldn't tell you for word for word.  
1689  
1690 Q: That you recall?  
1691  
1692 A: Yeah, I know that did come out, they had some issues uh, and like I said I  
1693 mean there was so much stuff coming out.  
1694  
1695 Q: Okay, sure.  
1696  
1697 A: At that time, at that point, it was yeah okay whoop.  
1698  
1699 Q: I'm just asking if you specifically recall something along those lines.  
1700  
1701 A: Yeah.

INTERVIEW WITH MICHAEL WILEY

Interviewer: Det. (Ray Penzon)

05-24-13/6:03 pm

Case # 13-1984

Page 53

2330

2331 A: Yep it was uh, 'cause like I said (Vance) was to my right. I spun down and  
2332 told him to go, I got it. 'Cause again they're doing something at the door and  
2333 this thing is trying to get back up and I'm like click click click and then  
2334 climbed over the fence and by that time the door was open. Um so I never  
2335 want to have just two guys going in. Um, hell there could have been five, but  
2336 at that moment I looked and I only saw two, 'cause I definitely know...

2337

2338 Q1: Mm-hm.

2339

2340 A: ...somebody went to Side 3, I come to find out it was (Waller) um because  
2341 there was an open breach point.

2342

2343 Q1: Have you ever heard anything - did you know if this guy had uh, any weapons  
2344 associated with him?

2345

2346 A: Yeah, drive-by.

2347

2348 Q1: Right.

2349

2350 A: Uh, he was guilty of a drive by um, there was - there was conflicting reports  
2351 where he had a weapon or didn't have a weapon. Baby's momma, "No he ain't  
2352 got no gun," blah blah blah. I don't know how many times I've heard that and  
2353 found weapons.

2354

2355 Q1: Mm-hm.

2356

2357 A: And I've been trying to get all kinds of intel from uh, from command, "Hey  
2358 somebody talk to me. Tell me about these windows, tell me what's on the  
2359 other side of them. Can I potentially go up there, breach it, hit him with some  
2360 less lethal? Or maybe he's separated with the kid. If I can just snatch the kid  
2361 out the window type deal on Side 4?" Because I asked a couple of times. Uh,  
2362 but never got a response. And again, like I said this time now, he's - he's - he's  
2363 constantly coming downstairs and he's always coming on Side 1.

2364

2365 Q1: Mm-hm.

2366

2367 A: He had made some, uh, movement toward Side 3 without the kid from what I  
2368 could tell. That's what it sounded like over the radio. So again, I don't know  
2369 what - where the kid was, but I do know there's a lot of screaming and yelling.  
2370 Uh, so I'm like, "Man this guy's amped up." Um, there was a lot of - you  
2371 know, typically through these things, "Hey, what are we," you know, on a  
2372 barricade it's real simple, you know, the guy's by himself, you know, we'll  
2373 deploy a couple bangs, we'll set up a charge on a door, let him know, "Hey,  
2374 you're not free to leave, there's - the best way for you - for this to end is you



<p style="text-align: right;">Page 1</p> <p>1 UNITED STATES DISTRICT COURT 2 WESTERN DISTRICT OF WASHINGTON AT SEATTLE 3 4 FREDRICK and ANNALESA THOMAS; ) and JO-HANNA READ, as Guardian) 5 ad Litem of E.T., a minor, ) 6 Plaintiffs, ) 7 vs. ) No. 3:15-cv-05346 BJR 8 JASON CANNON; BRIAN MARKERT; ) RYAN MICENKO; MICHAEL WILEY; ) 9 MICHAEL ZARO; CITY OF FIFE; ) CITY OF LAKEWOOD; and PIERCE ) 10 COUNTY METRO SWAT TEAM, ) 11 Defendants. ) 12 13 DEPOSITION UPON ORAL EXAMINATION 14 OF 15 NILS LUCKMAN 16 17 10:50 A.M. 18 NOVEMBER 17, 2016 19 9401 LAKEWOOD DRIVE SW 20 LAKEWOOD, WASHINGTON 21 22 23 24 REPORTED BY: CHERYL O. SPRY, CCR No. 2226 25</p>	<p style="text-align: right;">Page 3</p> <p>1 I N D E X 2 3 EXAMINATION BY: PAGE 4 MR. WHEDBEE 4 5 MR. LeBANK 109 6 EXHIBITS FOR IDENTIFICATION PAGE 7 Exhibit 53 5/24/2013 transcript of interview 4 8 between Sgt. Nils Luckman and Det. Todd 9 Jordan; D-DISCL 000370 - 000396 10 Exhibit 53A 5/25/2013 Incident Detail Report 36 11 Exhibit 53B Handwritten diagram of Sergeant 44 12 Luckman's 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
<p style="text-align: right;">Page 2</p> <p>1 A P P E A R A N C E S 2 3 FOR THE PLAINTIFFS: 4 DAVID J. WHEDBEE 5 MacDonald Hoague &amp; Bayless 6 705 Second Avenue, Suite 1500 7 Seattle, Washington 98104-1741 8 206.622.1604 9 davidw@mhb.com 10 11 MICAH R. LeBANK 12 Connolly Law Offices 13 2301 North 30th Street 14 Tacoma, Washington 98403 15 253.593.5100 16 mlebank@connolly-law.com 17 18 FOR THE DEFENDANTS: 19 JEREMY W. CULUMBER 20 Keating Bucklin &amp; McCormack 21 800 Fifth Avenue, Suite 4141 22 Seattle, Washington 98104-3189 23 206.623.8861 24 jculumber@kbmlawyers.com 25</p>	<p style="text-align: right;">Page 4</p> <p>1 LAKEWOOD, WASHINGTON; NOVEMBER 17, 2016 2 10:50 A.M. 3 --oOo-- 4 (Deposition Exhibit 53 was marked for 5 identification.) 6 NILS LUCKMAN, 7 sworn as a witness by the Certified Court Reporter, 8 testified as follows: 9 EXAMINATION 10 BY MR. WHEDBEE: 11 Q. Sergeant Luckman, my name is David Whedbee. I 12 represent Annalesa Frederick and Elijah Thomas in this 13 matter. 14 A. Okay. 15 Q. And also with me is Micha LeBank from the 16 Connolly Law Firm. And they represent the Estate of 17 Leonard Thomas. 18 A. Okay. 19 Q. First of all, if you could just state your 20 name and spell it for the record, please. 21 A. My name is Nils, N-I-L-S, as in Sam. And my 22 last name is Luckman, L-U-C-K-M-A-N. 23 Q. And Sergeant Luckman, have you ever been 24 deposed before? 25 A. I believe twice before.</p>

Page 69

1 A. Because when somebody is in a hostage  
2 negotiation and they're in a situation and they're  
3 there, just talking to them that way, that's a  
4 communication method, but that's -- ensuring the safety  
5 of him and everyone involved, we need to physically  
6 contact him and speak to him so we made sure that was --  
7 and it wasn't through the window.

8 But also, I couldn't verify whether he was in  
9 the window or not. The only time I can recall is when  
10 he held his son up to the window.

11 Q. And I understand that ultimately that might  
12 not be the goal, but what I'm talking about, in your  
13 view, is his coming to the window when you say we need  
14 to physically speak to you, is that a form of  
15 cooperation, in your view?

16 A. Yes.

17 Q. Did you ever say to Mr. Thomas that you also  
18 needed to see his son to make sure that he was okay?

19 A. Yes.

20 Q. When you were -- when you quote yourself here  
21 on page eight, the last line, "We can't leave until we  
22 physically speak with you," is that the same time that  
23 you think you would have said we need to see your son to  
24 make sure that he's okay?

25 A. I can't recall if -- yeah, I can't recall.

Page 70

1 Q. And on line 369 you say -- well, first of all,  
2 the question was, "did he ever talk about his son being  
3 in the house?" And you said, "Yes. Multiple times he  
4 said his son was in the house. At one point I said,  
5 'Well, is your son okay?' 'Yeah, my son's okay.'"

6 At this point, do you think that you would  
7 have told him that you, the police officers, needed to  
8 see his son to make sure that he was okay?

9 A. Yeah, that's probably why I asked the question  
10 there, I was trying to ensure both their safety.

11 Q. And then you say, "And that's when he brought  
12 the son to the window."

13 Do you think that that was a form of  
14 cooperation?

15 A. I don't know, because is he complying with  
16 part of what I'm saying? Sure, but there is -- but  
17 we're still not there.

18 Q. I understand you're not at the ultimate goal,  
19 but if we're just taking baby steps, would you agree  
20 that he was complying with your directive that you  
21 needed to see his son?

22 A. And I would say no, because for me I can't see  
23 him at that point.

24 Q. Okay, understand. But I mean, you the  
25 collective officers need to see his son. So he's

Page 71

1 showing you the son at the window. Do you think he's  
2 complying with that directive?

3 A. Probably not the way I would want it to  
4 happen, though, but that's --

5 Q. Understood. But do you agree that in some  
6 form he's complying with what you're asking him to do?

7 A. Yes.

8 Q. And then when he says, "Look, I'll hold him  
9 out the window for you," and you say, "No, no, no,"  
10 you would agree that he is -- the reason he's holding  
11 him out of the window, as you quote him here, is because  
12 he's trying to show the officers that his son is okay,  
13 because, in some way, he's trying to comply with your  
14 orders?

15 A. No.

16 Q. No?

17 A. No.

18 Q. Why not?

19 A. Because I don't believe -- I don't believe  
20 that was the -- I never asked him to do that, I never  
21 asked him to hold him out the window. I don't believe  
22 that is correct, no. I believe that was -- that was  
23 Mr. Thomas's decision of how he chose to do that. And  
24 that wasn't something I encouraged.

25 Q. But when he did hold, according to you, when

Page 72

1 he said, "Look, I'll hold him out the window," it was in  
2 the context of you asking that the officers needed to  
3 see the son; right?

4 A. And what I said was -- I said, "We need to  
5 ensure the safety -- we need to talk to you and make  
6 sure both of you are okay."

7 And then he initiated the window part. That  
8 was all -- I didn't say come up to the window, I didn't  
9 say bring him to the window. That was all initiated by  
10 him.

11 Q. But when he did that, that was all in the  
12 context of you saying, as you said a minute ago, that we  
13 need to see the son?

14 A. Yes.

15 Q. Okay. And from your perspective, though, you  
16 don't know whether he, in fact, held the son out the  
17 window or not; correct?

18 A. I couldn't see it, no.

19 Q. And when you said, look -- sorry, in response  
20 to him allegedly saying, "Look, I'll hold him out of the  
21 window for you," and you saying, "No, no, no," how did  
22 Mr. Thomas respond?

23 A. It was real tense, because I think he's trying  
24 to hold him out the window. He's talking to me on the  
25 phone. I'm trying to say, "No, no, no," because my

<p style="text-align: right;">Page 73</p> <p>1 first thought was with everything he told me about his  2 current -- what I believed, he was intoxicated and  3 things like that, I was concerned about the kid's  4 safety. So this is when the track gets really fast.  5 And I started saying, "No, no, no, no, no. Bring the  6 kid back in. No, no, no, don't do that."  7 Q. Did Mr. Thomas ever say, "Oh, he's back in,"  8 or did he ever --  9 A. I can't recall. I'd have to read it. But at  10 a point I guess he did, but I know it was -- he was out  11 the window from what they were communicating over the  12 radio. And I heard, "Hey, he's got the kid up to the  13 window" at the time. But I don't know how long.  14 Q. And unfortunately, the questioner never asked  15 you this question, whether Mr. Thomas brought the child  16 back in through the window or said anything about that.  17 So that's why I'm asking whether he said something to  18 you.  19 A. I don't recall.  20 Q. And do you have any idea how he responded to  21 you saying, "No, no, no"?  22 A. He just at the time, he just kept taking the  23 kid to the window and just kept going. He seemed to be  24 completely ignoring me when I said, "Don't do that,  25 don't do that," because I didn't want him to put him at</p>	<p style="text-align: right;">Page 75</p> <p>1 him and Mr. Thomas said that -- he said, "Look, I'll  2 take him to the window," or whatever he said, did he --  3 did he threaten the child at all when he was talking to  4 you?  5 A. No, not that I recall.  6 Q. Up until this point in your interactions with  7 Mr. Thomas, had he ever threatened to harm the child  8 verbally?  9 A. No, not that I recall.  10 Q. Did he take any action, aside from coming to  11 the window, that you believed threatened the safety of  12 the child?  13 A. No, not that -- no.  14 Q. Did he ever mention whether he had any weapons  15 in the house?  16 A. No.  17 Q. And you asked him many times, didn't you?  18 A. Yeah, I repeated it quite a few times, yeah,  19 yes.  20 Q. At the bottom of page ten, line 443, you said,  21 "I had heard from somebody that he said he had a pistol  22 at some point."  23 Do you know who that somebody is?  24 A. I believe it was Officer Johnson. But he  25 never said anything to me in talking about Mr. Thomas,</p>
<p style="text-align: right;">Page 74</p> <p>1 risk by even partially hanging him out or whatever he  2 planned to do at that point. I was just concerned with  3 him not doing it.  4 Q. Understood. Do you have any idea from talking  5 to your fellow officers whether he in fact held the  6 child outside of the window?  7 A. They said over the air that he's got the kid  8 at the window. And I don't recall if they said he was  9 actually out the window, how far he was out. I don't  10 know. And then at some point they probably  11 communicated, it wasn't asked, but I don't know.  12 Q. Okay. So your testimony is you can't remember  13 whether any of the fellow officers said that Leonard  14 Thomas was holding the child outside of the window; is  15 that right?  16 A. I recall my -- I recall them saying he was --  17 that he's got the child at the window. I can't remember  18 if it was out or at, I can't recall that part, the  19 specific, what that was, how they said it.  20 Q. Okay.  21 A. Because it was over the radio and, you know --  22 Q. Okay. But whatever they said, it was captured  23 on the radio, the transcript; right?  24 A. I would -- yes.  25 Q. When he took his -- when you were talking to</p>	<p style="text-align: right;">Page 76</p> <p>1 and then I never heard anything yelled from the house.  2 So he never said anything to me. I never -- yeah.  3 Q. Okay. So as far as you're concerned from  4 23 -- from 11:38 p.m. to 12:24 p.m., you did not hear  5 Mr. Thomas yell anything about having a pistol or any  6 kind of weapon?  7 A. No.  8 Q. Did you and Officer Johnson have any  9 discussion at any point about him hearing that  10 Mr. Thomas -- or him hearing Mr. Thomas say that he had  11 a pistol?  12 A. Yes.  13 Q. And what was that conversation about?  14 A. I believe it was after the incident was over,  15 or it may have been after Paul cleared, after Metro  16 arrived and they took up the positions, that the  17 officers that were there, and then Paul ended up  18 contacting me. Because Paul was the one who contacted  19 me, notified me of what happened, because I had already  20 cleared after I gave the information to Metro and left  21 the scene.  22 Q. And what did Paul say?  23 A. Well, I heard him say that he had a pistol  24 or -- and I don't know the exact word, pistol or gun at  25 that point, but Paul had told me that. And I said,</p>



<p style="text-align: right;">Page 77</p> <p>1 "Well, I never heard him say anything, he never said 2 anything to me." 3 Q. And did Paul tell you when he heard this, like 4 when in the course of the incident? 5 A. I don't recall. I don't know when he told me 6 that. Like I said, I don't know. 7 Q. When you say here, "I had heard from somebody 8 that he said he had a pistol at some point," you did not 9 have that information when you were talking to him on 10 the phone it sounds like." 11 A. I don't believe I did. When I was speaking to 12 him on the phone, I don't believe -- I don't believe -- 13 yeah, no, I don't recall having that information when I 14 was on the phone with him ever. 15 Q. Is that some information you would have wanted 16 to know? 17 A. Probably, but I'd asked him so many times if 18 he did, and he told me no. And maybe he yells to 19 somebody else he does. I don't know if it would have 20 made much of a difference in my negotiation. Maybe it 21 would have. I don't know. 22 Q. Why would it have? 23 A. I can't speak to whether it would or wouldn't. 24 Q. Then you carry on, so you -- so line 444, you 25 say, "And I kept repeating to him on the phone also, 'Do</p>	<p style="text-align: right;">Page 79</p> <p>1 not Mr. Thomas was armed? 2 A. That's always one of the goals, yeah. 3 Q. And -- 4 A. You're trying to get as much information as 5 you can. 6 Q. And if you flip to the next page, page eleven, 7 it sounds like you said, then I did go and ask -- "then 8 I did also ask mom and wife. I said, 'Does he have 9 anything in the house that's gonna -- other than normal 10 kitchen utensils, things like that, does he have any 11 guns?' She said, 'No.'" 12 So were you trying to confirm information that 13 Mr. Thomas had given you that he didn't have a weapon 14 with his wife and mother? 15 A. Yes. 16 Q. And so when they say "No," does that further 17 convince you that he doesn't have a weapon? 18 A. Yes, but -- and let me clarify. That 19 conversation with them, that was after I had left and I 20 was back. I spoke to them back by the negotiator rig. 21 And I was asked to speak to them, and I did. 22 Q. Okay. 23 A. I wasn't on scene. That had nothing to do 24 with my negotiation at the time. 25 Q. The conversation that you had with mom and</p>
<p style="text-align: right;">Page 78</p> <p>1 you have any weapons at all?' He goes, 'No, I'm 2 unarmed. I have nothing. I'm' -- and he used the word 3 I'm unarmed probably four or five times in the 4 conversation." 5 Did this convince you that he didn't have a 6 weapon? Did you believe him? 7 A. Based upon what he's telling me, I mean 8 your -- how much he -- I don't know. No, I couldn't 9 really speak to that. 10 Q. You know, I know in general you're always 11 assuming that he has a weapon and you're preparing for 12 that eventuality, but you spent 45 minutes on the phone 13 with him. And I'm curious about whether you yourself 14 believed he had a weapon or not. 15 A. I don't know, because I would -- there is 16 nothing that told me he did, but there was nothing that 17 told me he didn't. So I would -- 18 Q. He told you five times he didn't have a 19 weapon. 20 A. But there was nothing that I know of 21 concretely other than his -- people have lied to me 22 many, many times in my career. And that's not something 23 I would assume, just because he told me five times as 24 opposed to one or two, that that's the truth. 25 Q. Was one of your goals to determine whether or</p>	<p style="text-align: right;">Page 80</p> <p>1 wife occurred before the shooting, though; right? 2 A. Yes. 3 Q. You alluded a moment ago to a mini debrief 4 that you had with the SWAT team once they came in. 5 A. Just the negotiator. 6 Q. Okay. And would that be with Sergeant Eakes? 7 A. Yes. 8 Q. So in your mini debrief with Sergeant Eakes, 9 did you mention that you had asked Mr. Thomas whether he 10 had any guns and he said five times that he did not? 11 A. I probably didn't mention how many times. I 12 probably said he told me, and I don't -- but I know I -- 13 that's information that I normally would communicate, 14 that he told me he was unarmed. 15 Q. Okay. And did you mention to Sergeant Eakes 16 that -- did you mention to Sergeant Eakes that you had 17 had this conversation with mom, Annales Thomas, and 18 wife Kim Thomas about whether he had any guns in the 19 house, and that they said, "No"? 20 A. I -- I don't know. I don't know if I 21 specifically phrased it like that or if I phrased it 22 that Mr. Thomas himself told me that he wasn't armed. I 23 don't know if I said in the -- I don't know. 24 Q. So you're not sure whether you added the other 25 information that you had gotten from the family members,</p>



## Co-Op Cities Metro Crime Response Unit

This transcript was prepared by a third party that did not participate in the interview. It is a draft only as it has not been verified for complete accuracy. Only the audio/video file should be considered a true, complete and accurate record of the interview.

Subject of Interview: Ofc. Mark Eakes

Interviewer(s): Det. Todd Jordan, Det. Jeff Hall, and Investigator Keith  
Barns

EXHIBIT	11
M. Eakes	
DATE:	3-29-16
Shari L. Wheeler, CCR	

INTERVIEW WITH OFC. (MARK) EAKES

Interviewer: Det. Jordan

5-24-13/7:39 am

Case # 13-1984

Page 6

224 Q: Did, uh - why was the 4-year-old requested to come out of the house, I mean,  
225 what was the - do you know - did they give you a briefing on why the 4-year-  
226 old needed to come out, what his issue was...

227  
228 A: Yeah, the other information I was given that he, um, is bipolar. Um, that he's  
229 off his medications and, um, possibly intoxicated or he was intoxicated,  
230 believed to be. And then, um, also that he had made some, uh, statements  
231 about having a - a weapon, a gun. And...

232  
233 Q: Uh, tonight?

234  
235 A: Yes.

236  
237 Q: Yeah. And then did he make any, uh - were you aware of any threats that he  
238 had a gun, did he threaten himself, the police or the children with the gun or  
239 just that he...

240  
241 A: No, I wasn't given any statements that - that I recall right now anyway about  
242 that, so...

243  
244 Q1: Who - who provided you the information about the gun?

245  
246 A: Um, I - I think - oh, I'm sorry, that was, uh, Sergeant Luckman from Milton.

247  
248 Q1: From Milton, Luckman?

249  
250 A: Yeah.

251  
252 Q: So, uh, that was your initial briefing and then you - I would assume that you  
253 got closer to the scene with your negotiation rig or did you stay there?

254  
255 A: Yeah, initially what I do is I assign everybody a position. Uh, so I assigned  
256 (Charles Porsche) as a primary negotiator. And then, uh, a- assigned, uh,  
257 Detective (Molave) as a secondary. I assigned, um, Lieutenant Thompson as  
258 a scribe the scribe and intel person. And then I would be the team leader that  
259 kinda oversaw everything and work with, uh, command. Um, so we started  
260 setting up that way. We got, uh, permission or, you know, we were asked if  
261 we, uh - Detective - I'm sorry, Assistant Chief Zaro asked if we were calling  
262 in. Um, just as he was asking that we had gotten a phone number. I had  
263 written everything, all the intel that I had, um, and his past history and  
264 everything up on the whiteboard that's inside the negotiator rig. Um...

265  
266 Q: What past history did you have on him?

267  
268 A: Uh...

INTERVIEW WITH OFC. (MARK) EAKES

Interviewer: Det. Jordan

5-24-13/7:39 am

Case # 13-1984

Page 15

628  
629 A: ...I'm sorry?  
630  
631 Q: I said that's all right, take your time (unintelligible)...  
632  
633 A: Yeah.  
634  
635 Q: ...more details the better.  
636  
637 A: Yeah. Um, I have to refresh my memory and it's not coming to me right now,  
638 but, uh, that's the one we ended up going with.  
639  
640 Q: Okay.  
641  
642 A: And that's the only one we...  
643  
644 Q: So you got some other...  
645  
646 A: ...ever really...  
647  
648 Q: ...possible options...  
49  
650 A: Yeah, and it was just basically...  
651  
652 ((Crosstalk))  
653  
654 A: ...just getting to him to - to try to free himself just to - just to walk out, you  
655 know, let's take care of this tonight, so that we don't have to go any further. I  
656 kept trying to minimize it, saying look, we're just talking about a simple  
657 assault here, you know, we - it doesn't have to be bigger than this kind of  
658 thing, let's just go ahead and not make it a bigger issue than this.  
659  
660 Q: During that, uh, first 40 - 30 to 40-minute conversation, did he ever, uh,  
661 threaten, um, to harm the child?  
662  
663 A: No.  
664  
665 Q: Did he ever indicate he had a gun or a knife or anything like that, weapons in  
666 the house?  
667  
668 A: No, I actually did ask him if he had any weapons and he told me no. You  
669 know, obviously I've had many people say that and...  
70  
J71 Q: And then they had a weapon.  
672

INTERVIEW WITH OFC. (MARK) EAKES

Interviewer: Det. Jordan

5-24-13/7:39 am

Case # 13-1984

Page 16

673 A: ...and they have a weapon, but...

674

675 Q: Sure. Sure.

676

677 A: ...um...

678

679 Q: But no - no direct threats like if you don't leave I'm going to hurt my kid or

680 anything like that?

681

682 A: No.

683

684 Q: That you know...

685

686 A: No, he - he never said anything like that. I asked him where his son was

687 'cause I was trying to ascertain where he was related to his son, if he was with

688 his son, what bedroom, those kind of things. And, uh, he said he's with me.

689 And I said, okay. And he goes - well, I said, "What are you doing," and he

690 said, "Well, we're just - we're just laying here and he's sleeping right now."

691 And, uh - and he goes, "And you guys woke him up earlier," and those kind of

692 things. And, you know - and I think that was prior to us even getting there

693 and now he's back asleep and that kind of thing and so he kept trying to shift

94 the blame back to us for anything that happened in there. And so, I, uh - um -

695 I lost my train of thought again. The - oh, his son, yeah. I asked him where -

696 where he was and he just said they were in a - in a room. I go, "Oh, so, it's

697 your room," and, um - and he goes, "It's a bedroom." And I said - and he

698 goes, "And I'm watching you guys." And I said, "Well, how are you

699 watching us." He goes, "I have cameras here and I'm watching you on a 36 -

700 I'm watching you on my 36" TV." I go, "Oh, the one that's in your bedroom,

701 then." And he went - go with that, you know, he just said...

702

703 Q: Mm-hm.

704

705 A: ...it's in a room. You know, and - and I said, "Oh, wow." I said, "I - what do

706 you got cameras for," and he just never really responded to that. So he said he

707 - he said he had sur- surveillance cameras all around outside.

708

709 Q: Okay. Then, um, at that point, so wh- that was all within the first 30, 40-

710 minute conversation?

711

712 A: Uh, some of it might have been on an- in the second, but most of that was the

713 first conversation...

714

715 Q: Okay. So, on the second call, though, when you - and you called back in, how

716 long do you think you spoke to him then?

717



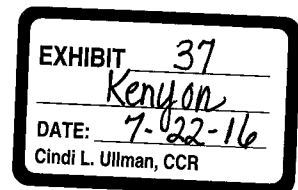


## Co-Op Cities Metro Crime Response Unit

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Subject of Interview: Ofc. Kenyon

Interviewer(s): Det. Wilcox and Det. T. Yabe



INTERVIEW WITH OFC. (ZACH) KENYON

Interviewer: (Tom Yalbee)

5-24-13/8:34 am

Case # 13-1984

Page 10

405 A: As things were progressing, um, you could see the male's, uh, shadow through  
406 the - the light here, so every time that he walked by, I knew he was going  
407 upstairs.

408  
409 Q: Okay.

410  
411 A: Uh, when I first initially got on-scene, he went upstairs, uh, opened the blinds  
412 in the window and left it open for quite some time.

413  
414 Q: Okay.

415  
416 A: So - and we - we had a good view of him, um, just looking through the  
417 scope...

418  
419 Q: So you saw him through the window...

420  
421 A: Through the window...

422  
423 Q: ...that's up there?

424  
425 A: ...yeah, and he was sticking out, talking to I believe it was (Rodriguez) at the  
426 time.

427  
428 Q: Okay.

429  
430 A: Um...

431  
432 Q: Did you see anybody else in the window there with him?

433  
434 A: A little bit later, yeah, he ended up bringing his son up - back upstairs.

435  
436 Q: Okay.

437  
438 A: Um, and then, uh, the dog was upstairs with him, too.

439  
440 Q: Okay.

441  
442 A: Who was hanging out the window.

443  
444 Q: How did the, uh - how did the child look to you?

445  
446 A: Uh, the child didn't look like he was - he was laughing with his dad.

447  
448 Q: Mm-hm.

449

INTERVIEW WITH OFC. (ZACH) KENYON

Interviewer: (Tom Yalbee)

5-24-13/8:34 am

Case # 13-1984

Page 11

450 A: Smiling, um...

451

452 Q: Okay.

453

454 A: ...I could tell that it's dad was talking to him.

455

456 Q: Mm-hm.

457

458 A: It seemed like he was trying to tell him to say stuff to the police like bye...

459

460 Q: Mm-hm.

461

462 A: ...you know leave...

463

464 Q: Mm-hm.

465

466 A: Um...

467

468 Q: Okay.

469

470 A: ...and then he took his son back downstairs.

471

472 Q: Um...

473

474 Q1: The child was out the window?

475

476 A: No - well, he had his - you know, his head was out, he was looking out the

477 window.

478

479 Q: Okay. Um, how about the dog, how did the dog look?

480

481 A: The dog just propped his, uh, feet up on the window and was just looking out

482 the window.

483

484 Q: Okay. Um, any - anything that you noticed about the dog's demeanor

485 throughout, uh - uh, kinda throughout the night?

486

487 A: Um, initially at first when he was looking out the window he was just looking

488 around. Uh, throughout the night when the dog came outside, uh, he started -

489 uh, was getting more aggressive. There was people around, he started

490 barking...

491

492 Q: Mm-hm.

493

494 A: ...um, and then the male half was provoking him saying...

D-DISCL 000354

INTERVIEW WITH OFC. (ZACH) KENYON  
Interviewer: (Tom Yalbee)  
5-24-13/8:34 am  
Case # 13-1984  
Page 19

810  
811 A: Yeah, they were sitting, uh...  
812  
813 Q: Okay.  
814  
815 A: ...a strip for an explosive breach on the back...  
816  
817 Q: Okay. Did that happen?  
818  
819 A: It eventually happened, yes.  
820  
821 Q: Okay.  
822  
823 A: Yeah.  
824  
825 Q: What happened at, uh - at the point that they made the breach?  
826  
827 A: Um, at the point they made the breach, uh, the - the child was out on the porch  
828 again. Um, dad was again, kneeling down in the doorway from what I saw  
829 through - through my glass. Um, they were advised to go ahead and breach  
830 the - the back door.  
31  
832 Q: Mm-hm.  
833  
834 A: Um, breach went, um, just by looking at the guy's face through - through my  
835 scope, he knew something - obviously it was loud, loud bang...  
836  
837 Q: Mm-hm.  
838  
839 A: ...um, his eyes kinda got big.  
840  
841 Q: Mm-hm.  
842  
843 A: He got up, ran straight for the kid. Grabbed him, started - basically guarded  
844 him in- into the residence.  
845  
846 Q: Okay.  
847  
848 A: Um, at that point as far as him standing up running, I just got T-shirt and legs.  
849 That was it. Um, after the breach went and he started to go back in, I heard a  
850 gunshot.  
851  
52 Q: Okay. Um, how many gunshots did you hear?  
53  
854 A: I heard one initially.

D-DISCL 000362





<p style="text-align: right;">Page 1</p> <p>1 UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON AT SEATTLE</p> <hr/> <p>3 FREDRICK and ANNALESA THOMAS; ) 4 and JO-HANNA READ, as ) Guardian ad Litem of E.T., a ) 5 minor, ) 6 Plaintiffs, ) 7 vs. ) 3:15-cv-05346 BJR 8 JASON CANNON; BRIAN MARKERT; ) 9 RYAN MICENKO; MICHAEL WILEY; ) 10 MICHAEL ZARO; CITY OF FIFE; ) CITY OF LAKEWOOD; and PIERCE ) COUNTY METRO SWAT TEAM, ) 11 Defendants. )</p> <hr/> <p>13 DEPOSITION UPON ORAL EXAMINATION OF 14 CHARLES PORCHE</p> <hr/> <p>16 10:05 A.M.</p> <p>17 NOVEMBER 10, 2016</p> <p>18 800 FIFTH AVENUE, SUITE 4141</p> <p>19 SEATTLE, WASHINGTON</p> <p>24 REPORTED BY: CINDI ULLMAN, CCR 2687</p>	<p style="text-align: right;">Page 3</p> <p>1 I N D E X</p> <p>2</p> <p>3 EXAMINATION BY: PAGE(S) 4 MR. WHEDBEE 4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13 EXHIBITS FOR IDENTIFICATION PAGE 14 Exhibit 47 Co-Op Cities Metro Crime Response 16 15 Unit: Interview transcript</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 2</p> <p>1 A P P E A R A N C E S</p> <p>2</p> <p>3 FOR THE PLAINTIFFS:</p> <p>4 DAVID J. WHEDBEE MacDonald Hoague &amp; Bayless 5 705 Second Avenue, Suite 1500 Seattle, WA 98104 6 206.622.1604 davidw@mhb.com</p> <p>7</p> <p>8</p> <p>9 FOR THE PLAINTIFF ESTATE OF LEONARD THOMAS:</p> <p>10 MEAGHAN M. DRISCOLL Connelly Law Offices 11 2301 North 30th Street Tacoma, WA 98403 12 253.593.5100 mdriscoll@connelly-law.com</p> <p>13</p> <p>14</p> <p>15 FOR THE DEFENDANTS:</p> <p>16 JEREMY W. CULUMBER Keating, Bucklin &amp; McCormack, Inc., P.S. 17 800 Fifth Avenue, Suite 4141 Seattle, WA 98104 18 206.623.8861 jculumber@kbmlawyers.com</p> <p>19</p> <p>20</p> <p>21 ALSO PRESENT: NONE</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1 SEATTLE, WASHINGTON; NOVEMBER 10, 2016</p> <p>2 10:05 A.M.</p> <p>3 --oOo--</p> <p>4</p> <p>5 CHARLES PORCHE,</p> <p>6 sworn as a witness by the Certified Court Reporter,</p> <p>7 testified as follows:</p> <p>8</p> <p>9 EXAMINATION</p> <p>10 BY MR. WHEDBEE:</p> <p>11 Q. Officer Porche, my name is David Whedbee. We</p> <p>12 met just before the deposition started. I represent</p> <p>13 Fred and Annalesa Thomas, in addition to Elijah Thomas.</p> <p>14 And also here is Meaghan Driscoll, who represents the</p> <p>15 Estate of Leonard Thomas as a different plaintiff.</p> <p>16 If you could just state your full name for the</p> <p>17 record and tell me where you work, please.</p> <p>18 A. Charles Porche, and I work for the City of</p> <p>19 Lakewood Police Department.</p> <p>20 Q. And can you spell "Porche," please.</p> <p>21 A. P, as in "Paul," o-r-c-h-e.</p> <p>22 Q. And which police force do you work with?</p> <p>23 A. Lakewood.</p> <p>24 Q. How long have you worked for the Lakewood PD?</p> <p>25 A. Since 2004, since initiation.</p>

<p style="text-align: right;">Page 77</p> <p>1 cops are still there. I don't want this going on?</p> <p>2 And then you say, That's when he kept --</p> <p>3 that's when -- sorry. Then he started again with the</p> <p>4 back and forth where Elijah would be on the porch and</p> <p>5 he'd pull him off -- where he'd pull him inside and</p> <p>6 shut the door.</p> <p>7 Did that start happening after Annalesa Thomas</p> <p>8 was pulled back?</p> <p>9 A. Pulled?</p> <p>10 Q. I don't know. I mean, I'm trying to -- so the</p> <p>11 decision was not to let her go up to get the kid</p> <p>12 herself, right?</p> <p>13 A. Right. She wasn't going to go all the way to</p> <p>14 the house.</p> <p>15 Q. Okay. And then the question at 928 was: So</p> <p>16 at that point, what did you hear on the phone once he</p> <p>17 said, There's still cops out there. I don't want this</p> <p>18 going on?</p> <p>19 And then you say: That's when he started</p> <p>20 again with the back and forth where Elijah would be out</p> <p>21 on the porch, and then he'd pull him inside and shut</p> <p>22 the door.</p> <p>23 So what I'm trying to figure out is did he</p> <p>24 start to do that with Annalesa up front, or had she</p> <p>25 been taken out of the situation when he started to do</p>	<p style="text-align: right;">Page 79</p> <p>1 Leonard never threatened the police when he was talking</p> <p>2 to Sergeant Eakes during this phase of the</p> <p>3 conversation; is that right?</p> <p>4 A. Correct. This looks like just conversation</p> <p>5 about Mr. Thomas not wanting the police there still.</p> <p>6 Q. So he never said anything like, "If the police</p> <p>7 don't leave, you know, I'm going to come out shooting</p> <p>8 or" -- never said anything like that?</p> <p>9 A. Not -- no.</p> <p>10 Q. And he never said, "If the police don't leave,</p> <p>11 I'm going to harm my son" or anything like that?</p> <p>12 A. No.</p> <p>13 Q. And then on 956, you say: It was -- no. I</p> <p>14 don't recall any of that -- meaning the threats. It</p> <p>15 was pretty much, "Then we'll just stay here" kind of</p> <p>16 thing instead. He doesn't have to leave. We'll just</p> <p>17 stay here.</p> <p>18 What are you talking about right there?</p> <p>19 A. To go back to what we've talked about earlier</p> <p>20 that, if Elijah were staying there, we were staying</p> <p>21 there.</p> <p>22 Q. Okay. So at this point, it's just a waiting</p> <p>23 game?</p> <p>24 A. Waiting and attempting to negotiate, yes.</p> <p>25 Q. And this... And it sounds like during the</p>
<p style="text-align: right;">Page 78</p> <p>1 the in and out again?</p> <p>2 A. That part, I don't recall how long she was out</p> <p>3 basically at the -- out there.</p> <p>4 Q. Okay.</p> <p>5 A. I know she never went all the way up to the</p> <p>6 house, but I don't know how long she was out there as</p> <p>7 to exactly what point it started with Elijah coming in</p> <p>8 and out and how long she was there during that.</p> <p>9 Q. Okay. Did Malave or Thompson come back and</p> <p>10 tell you guys in the negotiation -- negotiator rig what</p> <p>11 had happened out there with Annalesa?</p> <p>12 A. I don't remember that conversation, because I</p> <p>13 think -- yeah, I don't remember that conversation.</p> <p>14 Q. Assuming that Leonard Thomas was shot at 2:45</p> <p>15 a.m., when did -- when did this happen with grandma</p> <p>16 going up towards the door and then coming back? About</p> <p>17 how much time before the shot?</p> <p>18 A. I don't know. I really don't know that time</p> <p>19 line.</p> <p>20 Q. Do you have any idea whether it was no more</p> <p>21 than a half-hour before?</p> <p>22 A. No, I don't.</p> <p>23 Q. Okay. Then on page 22, I just want to</p> <p>24 confirm, so that's the two first paragraphs. Is it</p> <p>25 your understanding that -- or is it your testimony that</p>	<p style="text-align: right;">Page 80</p> <p>1 whole course of the incident there's been no change in</p> <p>2 the threat level to either Elijah or to the police</p> <p>3 around the house; is that right?</p> <p>4 A. Correct.</p> <p>5 Q. Okay. Which is essentially there is no threat</p> <p>6 to the police or to Elijah that Leonard Thomas</p> <p>7 specifically made, right?</p> <p>8 A. Not specifically.</p> <p>9 Q. And then generally are there any threats to</p> <p>10 the police or to Elijah?</p> <p>11 A. We don't know.</p> <p>12 Q. Could be, but just nothing specific that you</p> <p>13 know of.</p> <p>14 A. Correct.</p> <p>15 Q. And then if you go down below, 973, the</p> <p>16 questioner says: Was there a decision somewhere along</p> <p>17 the line what the tactical team was going to do?</p> <p>18 And then he asked again: Is it decided that</p> <p>19 the tactical team is going to enter the residence?</p> <p>20 That's the last question on page 22.</p> <p>21 And then you say: I would say that it was the</p> <p>22 fourth or fifth time, somewhere toward the end.</p> <p>23 Is that your understanding about when the</p> <p>24 decision was made that the tactical team would enter</p> <p>25 the residence?</p>



<p style="text-align: right;">Page 1</p> <p>1 UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON AT SEATTLE</p> <hr/> <p>3 FREDRICK and ANNALESA THOMAS; ) 4 and JO-HANNA READ, as ) Guardian ad Litem of E.T., a ) 5 minor, ) 6 Plaintiffs, ) 7 vs. ) 3:15-cv-05346 BJR 8 JASON CANNON; BRIAN MARKERT; ) 9 RYAN MICENKO; MICHAEL WILEY; ) 10 MICHAEL ZARO; CITY OF FIFE; ) CITY OF LAKEWOOD; and PIERCE ) COUNTY METRO SWAT TEAM, ) 11 Defendants. )</p> <hr/> <p>13 DEPOSITION UPON ORAL EXAMINATION OF 14 THOMAS THOMPSON</p> <hr/> <p>16 9:58 A.M.</p> <p>17 APRIL 28, 2016</p> <p>18 3737 PACIFIC HIGHWAY EAST</p> <p>19 FIFE, WASHINGTON</p> <p>24 REPORTED BY: CINDI ULLMAN, CCR 2687</p>	<p style="text-align: right;">Page 3</p> <p>1 I N D E X</p> <p>2</p> <p>3 EXAMINATION BY: PAGE(S) 4 MR. WHEDBEE 4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12 EXHIBITS FOR IDENTIFICATION PAGE 13 Exhibit 14 Radio Calls (52 pages) 29 14 Exhibit 15 Co-Op Cities Metro Crime Response 61 15 Unit: Interview of Lt. Thompson</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 2</p> <p>1 A P P E A R A N C E S</p> <p>2</p> <p>3 FOR THE PLAINTIFFS: 4 DAVID J. WHEDBEE MacDonald Hoague &amp; Bayless 5 705 Second Avenue, Suite 1500 Seattle, WA 98104 6 206.622.1604 davidw@mhb.com</p> <p>7</p> <p>8</p> <p>9 FOR THE DEFENDANTS: 10 JEREMY W. CULUMBER Keating, Bucklin &amp; McCormack, Inc., P.S. 11 800 Fifth Avenue, Suite 4141 Seattle, WA 98104 12 206.623.8861 jculumber@kbmlawyers.com</p> <p>13</p> <p>14</p> <p>15 FOR THE CITY OF FIFE: 16 F. HUNTER MacDONALD VSI Law Group PLLC 17 225 Tacoma Avenue South Tacoma, WA 98402 18 253.922.5464 hunter@vsilawgroup.com</p> <p>19</p> <p>20</p> <p>21 ALSO PRESENT: NONE</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1 FIFE, WASHINGTON; APRIL 28, 2016</p> <p>2 9:58 A.M.</p> <p>3 --oOo--</p> <p>4</p> <p>5 THOMAS THOMPSON, 6 sworn as a witness by the Certified Court Reporter, 7 testified as follows:</p> <p>8</p> <p>9 EXAMINATION</p> <p>10 BY MR. WHEDBEE:</p> <p>11 Q. Good morning. My name is David Whedbee. 12 Formally, for the record, I represent Annalesa and 13 Fredrick Thomas. I believe you used to be a lieutenant 14 and now you are a sergeant.</p> <p>15 A. Correct. They had a -- a title change is what 16 it was.</p> <p>17 Q. Sure. And can you identify yourself for the 18 record?</p> <p>19 A. Sergeant Tom Thompson, with the Fife Police 20 Department.</p> <p>21 Q. And have you ever been deposed before?</p> <p>22 A. I have.</p> <p>23 Q. And what was the -- what was the occasion for 24 that?</p> <p>25 A. It was many years ago. There was a lawsuit</p>

Page 85

1 you bringing her up here? And I'm like, Well, the  
2 commander told me to bring her here. What -- you know,  
3 and I'm like why -- Why do you not know this, you know.  
4 So that was -- there was confusion right there.

5 And then -- so I don't know how they worked  
6 that out, but we brought her around. She started  
7 trying to bring Elijah -- you know, convince him to  
8 just come to her. And then that's when Leonard was  
9 telling her, "Hey, Mom, you come up here," and she's  
10 like -- or Wiley wouldn't let her walk up there.

11 Q. There were two SWAT channels that were used,  
12 right?

13 A. I believe so.

14 Q. Were you -- how is it; was it an earpiece?

15 Was it --

16 A. I didn't have a radio with me.

17 Q. Oh, you didn't have a radio?

18 A. Yeah. When Porche and I changed, changed  
19 coats out, my coat was in my -- or my radio was in my  
20 coat. When we walked up there, I didn't have a radio,  
21 so I didn't -- I didn't hear what was going on.

22 Q. Did Malave have a radio?

23 A. No. No.

24 Q. Before you swapped your coat out and I guess  
25 left your radio behind, did -- well, let me ask you

Page 86

1 this. Did you ever hear Chief Zaro say, "If he tries  
2 to go back inside with the kid, don't let that happen,"  
3 or something like that?

4 A. I didn't hear that, no, sir.

5 Q. Do you have any idea, even just on what you  
6 learned after the fact, when Zaro gave that order?

7 A. I don't know.

8 Q. Okay. You were describing Annalesa asking  
9 Elijah to come, and Leonard saying, No, you come and  
10 get her. And then Wiley saying, She's not going up  
11 there, right?

12 A. Mm-hm.

13 Q. Then what happened?

14 A. So she's -- she's standing there at the back  
15 of the rig, and then there's -- there's tactical guys  
16 all over. They have the radio in the -- in the -- in  
17 the BearCat on. And we start hearing them. We start  
18 hearing them doing a countdown.

19 Q. Okay.

20 A. All right. And I -- and I know what that --  
21 that is, and -- and it -- it was surprise to me and  
22 Malave both, and I knew what was about to happen. They  
23 didn't tell me, "Hey, Tom, we're going to do this." I  
24 just knew what was about to happen. So I pulled her  
25 back behind that last back wheel because I know they're

Page 87

1 going to make entry. And so we pull her back, and then  
2 they go.

3 And we stayed there for a minute. And by "a  
4 minute," I mean, I don't know exactly how long it was,  
5 but as they start moving forward, it's like we just  
6 tried to keep her behind cover.

7 And then -- and then the shot rang out, which,  
8 really, that was the first we even knew that there was  
9 a sniper there. I didn't know where the sniper was,  
10 and it was quite startling. I mean, it was startling  
11 to me, so I got to imagine it was startling to her.

12 Well, the flashbang went -- went off first.

13 Q. And when you say "flashbang," do you mean the  
14 explosive breach?

15 A. On the -- I understand now that it was on the  
16 back.

17 Q. Uh-huh.

18 A. So that happened first, which really startled  
19 her. That, that didn't shock me as much because I kind  
20 of knew what they were going to do. And then --

21 Q. And again, just for clarity, you knew what  
22 they were going to do because you inferred it from the  
23 countdown?

24 A. Yes, sir. When the -- once the -- yeah,  
25 sorry.

Page 88

1 Q. So, yes. And -- but Chief Zaro did not tell  
2 you or Malave that he was contemplating an explosive  
3 breach when he sent you, Malave, and Annalesa out to  
4 the BearCat?

5 A. No, he did not.

6 Q. Okay. So you were describing that you figured  
7 out what was going to happen based on the countdown,  
8 right?

9 A. Well, we started hearing the countdown and --  
10 and Mike and I looked at each other like, Are they  
11 going to launch? You know, it's like, Really? We just  
12 got her up here. And then -- then the explosion went  
13 off. So as we're hearing the countdown, we move her  
14 behind the rig, and then the explosion went off. And  
15 they all -- they all went forward to the house, all the  
16 tactical guys. Everybody just takes off.

17 So then we're standing there with her, and  
18 then the shot rang out, which was the first we even  
19 knew where the sniper was.

20 Q. About how long passed between the explosion  
21 from the breach and the shot ringing out?

22 A. I don't know for sure. It was not very long,  
23 though. I don't -- I don't know. It -- it was not  
24 very long, though.

25 Q. Two seconds or five?

<p style="text-align: right;">Page 93</p> <p>1 him up?</p> <p>2 A. Not that I recall.</p> <p>3 Q. Was he crying?</p> <p>4 A. I don't recall.</p> <p>5 Q. Was he happy to see his grandmother?</p> <p>6 A. I don't know. I -- I don't know. Mike, or</p> <p>7 Malave, pretty much put them together. We put them in</p> <p>8 a car, and then I went back over to the rig and was</p> <p>9 like, What's just happened? You know.</p> <p>10 Q. And what did they tell you?</p> <p>11 A. Well, I wanted to know, you know, Is he down?</p> <p>12 What -- I mean, we heard multiple shots. I didn't know</p> <p>13 that they shot a dog. I didn't know if one of our</p> <p>14 officers had been shot. I didn't -- yeah, I didn't</p> <p>15 know anything. I just knew to get her out of there;</p> <p>16 that's all I knew.</p> <p>17 Q. And so when you went back and said, What just</p> <p>18 happened, did you --</p> <p>19 A. Well --</p> <p>20 Q. -- address that question to Zaro or to</p> <p>21 somebody --</p> <p>22 A. No. It was just kind of a -- Hey, what --</p> <p>23 what just happened here? And then I saw them bringing</p> <p>24 Mr. Thomas forward to where the medics could -- could</p> <p>25 work on him.</p>	<p style="text-align: right;">Page 95</p> <p>1 you had; you didn't believe that lethal force was</p> <p>2 justified.</p> <p>3 A. I didn't say that.</p> <p>4 MR. CULUMBER: Object to the form.</p> <p>5 A. I said I didn't -- I didn't think there was</p> <p>6 anything that I saw that would justify that. I didn't</p> <p>7 say I didn't think that they were justified in what</p> <p>8 they were doing.</p> <p>9 Q. (BY MR. WHEDBEE) Well, so my question was</p> <p>10 two-part. Your testimony was that there was nothing</p> <p>11 that you saw or heard when you were up around the</p> <p>12 BearCat with Annalesa that, in your view, justified</p> <p>13 lethal force, right?</p> <p>14 A. Correct.</p> <p>15 Q. Was there anything else that you learned</p> <p>16 during your collection of intelligence and whatever</p> <p>17 else you would have heard that justified the use of</p> <p>18 lethal force?</p> <p>19 MR. CULUMBER: Object to the form.</p> <p>20 A. I -- I did not see anything that would have</p> <p>21 justified that.</p> <p>22 Q. (BY MR. WHEDBEE) Now, Mr. Thomas also showed</p> <p>23 up, right? Fredrick Thomas?</p> <p>24 A. That's my understanding.</p> <p>25 Q. Did you see --</p>
<p style="text-align: right;">Page 94</p> <p>1 Q. And you saw -- you saw him, actually?</p> <p>2 A. I didn't get up close, but I saw them move him</p> <p>3 forward, and I think they -- I think they moved him</p> <p>4 into a carport or something, and then the medics</p> <p>5 started working on him.</p> <p>6 Q. Could you tell whether he was alive or not?</p> <p>7 A. I couldn't tell.</p> <p>8 Q. Was he screaming or anything like that?</p> <p>9 A. I don't recall.</p> <p>10 Q. Did anybody answer your question about what</p> <p>11 just happened?</p> <p>12 A. I don't know. I don't think so.</p> <p>13 Q. During your time with Annalesa and Malave</p> <p>14 around the BearCat, from what you could either see or</p> <p>15 hear, did Leonard do anything that gave you the</p> <p>16 impression that Elijah was in risk of serious injury or</p> <p>17 death?</p> <p>18 A. No.</p> <p>19 Q. Apart from what you saw and heard, did you</p> <p>20 have any information that convinced you that lethal</p> <p>21 force was justified?</p> <p>22 A. I did not.</p> <p>23 Q. And that was based on everything you knew of</p> <p>24 the officer safety alerts and the intelligence that you</p> <p>25 had gathered and passed on to Zaro, all the information</p>	<p style="text-align: right;">Page 96</p> <p>1 A. I never saw him. No. I -- I didn't know he</p> <p>2 was there until after apparently he -- he entered the</p> <p>3 backyard, I think it was. I -- I never talked to him.</p> <p>4 Q. In your communications with Chief Zaro or</p> <p>5 Sergeant Eakes or anybody else, did you -- did anybody</p> <p>6 suggest trying to have Fred Thomas talk to his son on</p> <p>7 the phone in order to resolve this situation?</p> <p>8 A. Not to me.</p> <p>9 Q. Did you attend after -- after the shooting</p> <p>10 incident and after the CRU came on the morning of the</p> <p>11 24th, did you attend any meetings with the SWAT team</p> <p>12 where the shooting incident was discussed?</p> <p>13 A. I did.</p> <p>14 Q. And what was discussed there?</p> <p>15 A. It was a critical incident debrief.</p> <p>16 Q. And what was discussed there?</p> <p>17 A. The shooting itself.</p> <p>18 Q. And can you describe in detail what was talked</p> <p>19 about?</p> <p>20 A. Well, I was told when I went to that meeting</p> <p>21 that it was confidential and that anything that was</p> <p>22 said in that room was confidential to the people in the</p> <p>23 room.</p> <p>24 Q. Was this a peer-support meeting, or was this a</p> <p>25 critical incident...?</p>





1	Wiley	Suspect is also on side one.
2		
3	Wiley	Wiley Command.
4		
5	Zaro	Go ahead.
6		
7	Wiley	Child is sitting on a porch waiting (Inaudible) grandmother was going to
8		(Inaudible) other kids?
9		
10		(audio of background talking) grandma (Inaudible) ah, walking out.
11	Zaro	(Inaudible) grandma come down so we're ah going over that now. Do not let
12		him back in the house with that kid.
13		
14	Wiley	Copy.
15		
16	Wiley	Wiley Cannon
17		
18	Cannon	Go ahead.
19		
20	Wiley	Move to side three going now.
21		
22		(Inaudible)
23		
24	Massey	Massey Wiley you want us to hook up with Cannon?
25		
26	Wiley	Affirm we will move to side one.
27		
28	Cannon	We're at the door. Operator is talking to the kid or the dad but negotiator
29		talked to the dad. Door is locked, we're at side three.
30		
31		Copy that.
32		
33	Wiley	Wiley Command.
34		
35	Cannon	Cannon Wiley. Making sure you don't want us to go in yet?
36		
37	Wiley	Wiley Command.
38		
39	Zaro	Negative not yet, standby.
40		

1	Wiley	Negative we lost the opportunity. The kid is back in the house.
2		
3	Cannon	Cannon to Micenko, you still at the AT?
4		
5	Micenko	Yah. (Inaudible) here to
6		
7	Cannon	Good man, stay there.
8		
9		Kid's coming back outside. We have a car seat. He's just holding at the front
10		door.
11		
12	Wiley	Cannon move to side three again.
13		
14	Cannon	Copy.
15		
16	Zaro	Hey we're bringing grandma up so she is visible from the front door. Because
17		he'll release the kid when he sees the grandmother. So were just going to bring
18		him up close enough to be visible on the one side.
19		
20	Wiley	Copy. I want to have Vance and Waller cover grandma.
21		
22	Zaro	Copy that.
23		
24	Wiley	Sir can you standby for a second and meet me on SWAT one.
25		
26	Waller	He's still out front.
27		
28		Yah they're standing in the front door. Dad's got kid and dog right there at the
29		front door. The breach one.
30		
31	Zaro	Grandma's moving up right now.
32		
33		Upstairs in the window.
34		
35	Wiley	Wiley Cannon. Hang the charge on side three.
36		
37	Cannon	Okay. We got the charge.
38		
39	Wiley	Coming to ya.
40		



1		a delta orders supposed to be given.
2		
3	Sgt. Rich Hall	And, when you, ah, discussed that with him, ah, were you, were
4		you talking them in trying to identify if that's what that was, or
5		how you, how did you take that?
6		
7	Ofer. Brian Markert	Um, Yes. We were basically trying to...Well, I mean, we
8		basically said to one another, um, that's, if he's trying to give us
9		delta order, that's not a delta order. Um, we felt that, ah, it lacked
10		the specific wordin', um, to fulfill that requirement, so, I did not
11		feel at that point that I had a, that I was operating under delta
12		order protocols.
13		
14	Sgt. Rich Hall	Okay.
15		
16	Ofer. Brian Markert	But, it did concern me when he said that. It did, ah, heighten my
17		sense of concern for the hostage because why would he say that...
18		
19	Sgt. Rich Hall	Right.
20		
21	Ofer. Brian Markert	Ah, Chief Zaro. Why would he say, we, he can't, he can not go
22		back inside the house, or we were not al-us-you know, we were
23		not allo—ah, to allow that to happen.
24		
25	Sgt. Rich Hall	So in, the totality of the circumstances and the, and the things that
26		you were taking in at that point, that heightened your sense of
27		what was going on?
28		
29	Ofer. Brian Markert	Yes. I, I felt that there was information available to Assistant
30		Chief Zaro that made him concerned that the, if this hostage went
31		back into the house, that basically something bad was gonna
32		happen. That, you know, physical injury or death, or, or, ah, you
33		know he felt the need to say, okay guys we can't let the hostage
34		go back inside with the suspect. So that definitely, ah, raised my
35		concern that the hostage was facing some sort of, you know,
36		threat of, or physical harm or, or death at the hands of the suspect.
37		
38		
39	Sgt. Rich Hall	Okay. We're gonna skip over page eight. On page nine, ah, last
40		paragraph, um, you said the suspect stood up holding his arms



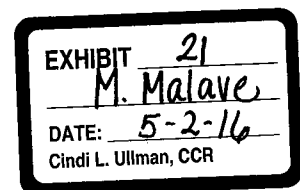


## Co-Op Cities Metro Crime Response Unit

This transcript was prepared by a third party that did not participate in the interview. It is a draft only as it has not been verified for complete accuracy. Only the audio/video file should be considered a true, complete and accurate record of the interview.

Subject of Interview: Det. Malave

Interviewer(s): Det. Nikola and Ofc. Scott



INTERVIEW WITH OFC. MIKE MALAVE

Interviewer: Det. (Nick Laos)

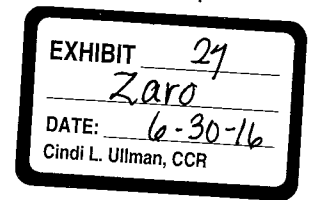
05-24/ 5:58 am

Case # 13-1984

Page 4

136 Q: So how much longer after that, um, did you respond to his residence?  
137  
138 A: Um...  
139  
140 Q: Was it immediately or...  
141  
142 A: No. The decision was made with command and, uh, Sergeant Eakes, uh,  
143 negotiator team leader, that, um, we were gonna try to use a hailer, so we  
144 started getting the hailer set up. As we were doing so, um, we were advised  
145 by, uh, by officers on the perimeter that he was actually talking to them, um,  
146 uh, I believe from a window. So the decision was made for, um, myself and,  
147 um, uh, Officer Porsche from Lakewood to go forward and - and speak to  
148 him. As we were, uh, preparing our gear to go forward, um, he actually called  
149 911. And I don't know if he got in touch with state patrol or what, but I  
150 believe he was transferred from them, um, to Fife and Fife reached out to our,  
151 uh, command center. And at that point he started speaking to Charles Porsche  
152 from Lakewood. Um, I stayed outside and then, um, they spoke for - I'm  
153 sorry. He didn't speak to Charles Porsche. He spoke to, uh, Sergeant Eakes.  
154 Um, they spoke for anywhere from 45 minutes to an hour, I believe. Um, and  
155 I waited outside the, uh, outside of the negotiator rig. Um, and then the  
156 decision was made that, um, Leonard Thomas wanted to let his son, Elijah, go,  
157 but only to his mother, so Elijah's grandmother. So the decision was made for  
158 Lieutenant (Thompson) and I to - to, um, escort, uh, the subject's grandmother  
159 up to the front towards the armored, uh, vehicle. Uh, we - we met with her  
160 briefly, told her what - what had, you know, what was transpiring and what  
161 Leonard was requesting. She was, um, more than willing to go up there. Um,  
162 she said she wanted to come with us. We told her how it was gonna happen.  
163 Um, two operators came and met us and escorted, um, myself, Lieutenant  
164 (Thompson) and the, uh, subject's grandmother. And I - I apologize. I don't  
165 remember her name at the moment. Uh, and we walked her towards, um, the  
166 armored vehicle. Then we set up behind the...  
167  
168 Q: I'm sorry. I'm just (unintelligible) interrupt you. And when you say s- it was  
169 Leonard's grandmother that you understood it as or was it the (unintelligible)?  
170  
171 A: No, I understood it as...  
172  
173 Q: Elijah's grandmother?  
174  
175 A: It was Elijah's grandmother.  
176  
177 Q: Okay. So...  
178  
179 A: The four-year-old's grandmother.  
180





## Co-Op Cities Metro Crime Response Unit

This transcript was prepared by a third party that did not participate in the interview. It is a draft only as it has not been verified for complete accuracy. Only the audio/video file should be considered a true, complete and accurate record of the interview.

Subject of Interview: Assistant Chief M. Zarro

Interviewer(s): Det. Ray Pumzalan and Sgt. Andy Suver

INTERVIEW WITH CHIEF MIKE ZARO

Interviewer: Det. Ray Puzalin

Case # 13-1984-2

Page 6

226  
227 Q: You remember anything specific that he says, any threatening things or  
228 anything that's indicating weapons or threats to the child, or?  
229  
230 A: No, they don't say any of that.  
231  
232 Q: Okay.  
233  
234 A: They just say he's yelling out the window. I believe at the time he was talking  
235 to T.J.  
236  
237 Q: Okay.  
238  
239 A: Ah, but I don't know...  
240  
241 Q: (Unintelligible).  
242  
243 A: ...yeah, I don't know exactly what was said.  
244  
245 Q: Okay.  
246  
247 Q1: But the judge says he's agitated and...  
248  
249 A: Very.  
250  
251 Q1: ...irrational? Okay.  
252  
253 A: Yeah, yeah, and we're actually close, and when they would key up the radio I  
254 could hear him yelling. So, that goes on for a little bit and um, you know,  
255 Charles and - and Mark try to re - you know, phone contact again, but it's -  
256 it's not working and we start setting up a plan to send Charles forward, a  
257 negotiator forward, to take over attempts to negotiate from T.J.  
258  
259 Q1: Okay.  
260  
261 A: Ah, as we're doing that, we're told that the suspect calls 911 from his cell  
262 phone.  
263  
264 Q1: Okay.  
265  
266 A: Ah, when he does that, the dispatcher calls us, or one of the Fife guys, ah, the  
267 Fife guy has them patch that call through to (Eakes') cell phone. So the guy  
'68 ends up talking - and goes through - and the guy ends up talking to Mark.  
269

D-DISCL 000870

INTERVIEW WITH CHIEF MIKE ZARO  
Interviewer: Det. Ray Puzalin  
Case # 13-1984-2  
Page 17

718 had set up an explosive charge on the door to make an emergency entry. So, I,  
719 ah, am listening to Mark talk to this guy and he's getting more and more  
720 agitated, um, the guy is not sending his, ah, kid, out to, um, grandma; she's  
721 there, she's just standing next to police and he doesn't like that. So, we have -  
722 we have really.

723  
724 Q1: He's seen her now at this point, he acknowledges that it's (unintelligible).

725  
726 A: Oh, yeah, he knows she's out there, and it's, the problem is that's there's  
727 police standing wither.

728  
729 Q: Does he take the kid back inside at that point and time?

730  
731 A: Almost.

732  
733 Q: Okay.

734  
735 A: Um, so he's yelling and getting more and more agitated with Mark, ah, about  
736 that fact, and he wants his mother to walk up to the porch, take the kid and go  
737 back, and now his mom is calling, at our direction, calling for the kid, and  
738 he's saying, "He's not going anywhere until I tell him to." Ah, and I can hear  
39 some of this over the radio when the guys key up, I can hear some of it on the  
740 phone, as Mark's having his negotiations, um, but I - I'm getting most of what  
741 - what the guy is saying directly because of that. So, ah, this is going on and  
742 on and the guy is getting more and more agitated and I knew that our team  
743 was set up in back; we had the entry team, and we had - now had the kid on  
744 the front porch again, ah, we had the front door open, so we had, um, the  
745 opportunity that we missed the first time to - to try and save this kid. So, I got  
746 on the air and I said, "Launch, entry team launch into the back, um, breach on  
747 door command," which, for that - for explosive breaching - there's a  
748 countdown that's done. Ah, and it's not - it would be, um, ridiculous and  
749 inappropriate for me sitting in the command post to do the countdown.

750  
751 Q1: (Unintelligible).

752  
753 A: Right, so what I do is I authorize the breach but give the, um, the countdown  
754 and the command to do it to whoever's on scene in this case; the team leader.  
755 So Wiley initiates the countdown and it is...

756  
757 Q1: And he's got eyes on the back at that point?

758  
759 A: No, he's got eyes on the front.

'60  
/61 Q1: Okay, all right, I, ah, I'm sorry, I thought the point was so that you could see  
762 if something was going sideways if you needed to abort the countdown.

D-DISCL 000881





<p style="text-align: right;">Page 1</p> <p>1 UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON AT SEATTLE</p> <hr/> <p>3 FREDRICK and ANNALESA THOMAS; ) 4 and JO-HANNA READ, as ) Guardian ad Litem of E.T., a ) 5 minor, ) 6 Plaintiffs, ) 7 vs. ) 3:15-cv-05346 BJR 8 JASON CANNON; BRIAN MARKERT; ) 9 RYAN MICENKO; MICHAEL WILEY; ) 10 MICHAEL ZARO; CITY OF FIFE; ) CITY OF LAKEWOOD; and PIERCE ) COUNTY METRO SWAT TEAM, ) 11 Defendants. )</p> <hr/> <p>13 VIDEOTAPED DEPOSITION UPON ORAL EXAMINATION OF 14 JOHN DERIG</p> <hr/> <p>16 1:39 P.M. 17 MAY 2, 2016 18 3737 PACIFIC HIGHWAY EAST 19 FIFE, WASHINGTON 20 21 22 23 24 REPORTED BY: CINDI ULLMAN, CCR 2687 25</p>	<p style="text-align: right;">Page 3</p> <p>1 I N D E X 2 3 EXAMINATION BY: PAGE(S) 4 MR. FORD 5 5 6 7 8 9 10 11 12 13 EXHIBITS FOR IDENTIFICATION PAGE 14 Exhibit 20 Co-Op Cities Metro Crime Response 14 15 Unit: Interview transcript 16 (Draft) 17 18 19 20 21 22 23 24 25</p>
<p style="text-align: right;">Page 2</p> <p>1 A P P E A R A N C E S 2 3 FOR THE PLAINTIFFS THOMAS: 4 TIMOTHY K. FORD MacDonald Hoague &amp; Bayless 5 705 Second Avenue, Suite 1500 Seattle, WA 98104 6 206.622.1604 timf@mhb.com 7 8 9 FOR THE DEFENDANTS: 10 JEREMY W. CULUMBER Keating, Bucklin &amp; McCormack, Inc., P.S. 11 800 Fifth Avenue, Suite 4141 Seattle, WA 98104 12 206.623.8861 jculumber@kbmlawyers.com 13 14 15 FOR THE CITY OF FIFE: 16 F. HUNTER MacDONALD VSI Law Group PLLC 17 225 Tacoma Avenue South Tacoma, WA 98402 18 253.922.5464 hunter@vsilawgroup.com 19 20 21 ALSO PRESENT: 22 LORI TALBOTT, Legal Videographer, CLVS YOM: Full Service Court Reporting 23 24 25</p>	<p style="text-align: right;">Page 4</p> <p>1 FIFE, WASHINGTON; MAY 2, 2016 2 1:39 P.M. 3 --oOo-- 4 5 THE VIDEOGRAPHER: We are on the record. 6 Here begins Media Number 1 in the deposition 7 of John Derig, in the matter of Fredrick and Annalesa 8 Thomas vs. Jason Cannon in the United States District 9 Court, Western District of Washington at Seattle; Case 10 number 3:15-cv-05346 BJR. Today's date is May 2nd, 11 2016. The time is 1:39 p.m. 12 The video operator today is Lori Talbott, with 13 YOM Reporting &amp; Video of Seattle, Washington. This 14 video deposition is taking place at 3737 Pacific 15 Highway East, Fife, Washington, and was noticed by 16 MacDonald Hoague &amp; Bayless. 17 Counsel, please voice identify yourselves and 18 state whom you represent. 19 MR. FORD: I'm Tim Ford, representing 20 the plaintiffs, Fred and Annalesa Thomas and E.J. 21 [verbatim]. 22 MR. CULUMBER: I'm Jeremy Culumber, for 23 the defense. 24 THE VIDEOGRAPHER: The court reporter 25 today is Cindi Ullman, with YOM Reporting &amp; Video.</p>

<p style="text-align: right;">Page 45</p> <p>1 A. I don't remember.</p> <p>2 Q. Was there gunfire after you were inside the</p> <p>3 house?</p> <p>4 A. I don't remember. There was gunfire.</p> <p>5 Q. Did you ever see a dog?</p> <p>6 A. Yes.</p> <p>7 Q. When did you see a dog?</p> <p>8 A. While we were on the 3 side.</p> <p>9 Q. Did you see --</p> <p>10 A. Prior to going inside.</p> <p>11 Q. Okay. Did you ever see a dog inside?</p> <p>12 A. No.</p> <p>13 Q. So where were you when you first saw</p> <p>14 Mr. Thomas? Were you in the same room with him, or did</p> <p>15 you see him through a door or what?</p> <p>16 A. When we're inside?</p> <p>17 Q. Yes.</p> <p>18 A. Yes. I was in the same room with him -- or</p> <p>19 entering the same room.</p> <p>20 Q. Was he in front of the door such that someone</p> <p>21 coming through the door would have to step over him or</p> <p>22 anything? Was he that close to it?</p> <p>23 A. I don't remember. I know he was inside the</p> <p>24 house.</p> <p>25 Q. Do you remember if the front door was closed</p>	<p style="text-align: right;">Page 47</p> <p>1 as another officer was coming in. Officer Watson was</p> <p>2 grabbing the child, and he was grabbing onto the kid,</p> <p>3 where Officer Watson had to struggle to get the child</p> <p>4 loose from him. That's when I started punching him in</p> <p>5 the face to get him distracted and some pain complaints</p> <p>6 so he'd let go of the kid.</p> <p>7 Q. And why did you feel that was necessary?</p> <p>8 A. Because at that time I believed he -- the</p> <p>9 child was in danger.</p> <p>10 Q. What danger would the child be in?</p> <p>11 A. From him. He is unstable, at best.</p> <p>12 Q. Did you have any particular thing you thought</p> <p>13 he might be doing to the child or he could do to the</p> <p>14 child in the -- in the situation he was in at that</p> <p>15 point?</p> <p>16 A. Nothing particular, no.</p> <p>17 Q. And during the course of these things that you</p> <p>18 just described, did either he or the child say</p> <p>19 anything?</p> <p>20 A. I don't remember.</p> <p>21 Q. Do you remember him saying anything the entire</p> <p>22 time you saw him before he expired?</p> <p>23 A. I don't remember.</p> <p>24 Q. And what about the child?</p> <p>25 A. I don't remember.</p>
<p style="text-align: right;">Page 46</p> <p>1 or open?</p> <p>2 A. I don't remember. I believe it was open.</p> <p>3 Q. Did officers at some point come through that</p> <p>4 front door?</p> <p>5 A. Eventually, yes.</p> <p>6 Q. And at the time the officers came through the</p> <p>7 front door, were any -- was anyone in the room other</p> <p>8 than yourself and the man and the child? In other</p> <p>9 words, had other officers arrived from the back or from</p> <p>10 anywhere else?</p> <p>11 A. I don't know.</p> <p>12 Q. So what did you do when you saw the man and</p> <p>13 the child?</p> <p>14 A. I approached him and was looking at the man</p> <p>15 for any weapons.</p> <p>16 Q. And were you able to see any?</p> <p>17 A. No.</p> <p>18 Q. Did you say anything to him?</p> <p>19 A. I don't remember.</p> <p>20 Q. Is there some protocol or some standard thing</p> <p>21 you might say to someone in that situation?</p> <p>22 A. Usually "Please get down."</p> <p>23 Q. And what happened then?</p> <p>24 A. I approached him, and he was still holding the</p> <p>25 child. So I grabbed his hair and pulled his head back</p>	<p style="text-align: right;">Page 48</p> <p>1 Q. And what happened with the child after you hit</p> <p>2 Mr. Thomas in the face?</p> <p>3 A. Officer Watson was able to pull the child</p> <p>4 free.</p> <p>5 Q. What happened then?</p> <p>6 A. And then observed that he was bleeding.</p> <p>7 Q. Who was bleeding?</p> <p>8 A. Mr. Thomas.</p> <p>9 Q. Was the child hurt at all as you could tell?</p> <p>10 A. No.</p> <p>11 Q. And where did you see that Mr. Thomas was</p> <p>12 bleeding; what part of his body?</p> <p>13 A. I believed it was the lower -- his abdomen</p> <p>14 area. I don't know the exact area.</p> <p>15 Q. And was the body -- was the blood around him,</p> <p>16 or was it coming out of him? Was it in his clothing?</p> <p>17 Where -- where did you see the blood?</p> <p>18 A. It was in his clothing.</p> <p>19 Q. In the front or back?</p> <p>20 A. Front. He was still sitting up.</p> <p>21 Q. How much blood? Lots of blood?</p> <p>22 A. It didn't look -- there was not a lot of</p> <p>23 blood.</p> <p>24 Q. Was it immediately apparent to you that that</p> <p>25 was a gunshot wound?</p>



<p style="text-align: right;">Page 1</p> <p>1 UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON AT SEATTLE</p> <hr/> <p>3 FREDRICK and ANNALESA THOMAS; ) 4 and JO-HANNA READ, as ) Guardian ad Litem of E.T., a ) 5 minor, ) 6 Plaintiffs, ) 7 vs. ) 3:15-cv-05346 BJR 8 JASON CANNON; BRIAN MARKERT; ) 9 RYAN MICENKO; MICHAEL WILEY; ) 10 MICHAEL ZARO; CITY OF FIFE; ) CITY OF LAKEWOOD; and PIERCE ) COUNTY METRO SWAT TEAM, ) 11 Defendants. )</p> <hr/> <p>13 DEPOSITION UPON ORAL EXAMINATION OF 14 MATTHEW WATSON</p> <hr/> <p>16 1:33 P.M.</p> <p>17 NOVEMBER 10, 2016</p> <p>18 800 FIFTH AVENUE, SUITE 4141</p> <p>19 SEATTLE, WASHINGTON</p> <p>24 REPORTED BY: CINDI ULLMAN, CCR 2687</p>	<p style="text-align: right;">Page 3</p> <p>1 I N D E X</p> <p>2</p> <p>3 EXAMINATION BY: PAGE(S) 4 MR. WHEDBEE 4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14 EXHIBITS FOR IDENTIFICATION PAGE 15 Exhibit 48 Co-Op Cities Metro Crime Response 11 Unit: Interview transcript 16 17 Exhibit 49 Photograph 52</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 2</p> <p>1 A P P E A R A N C E S</p> <p>2</p> <p>3 FOR THE PLAINTIFFS: 4 DAVID J. WHEDBEE TIFFANY M. CARTWRIGHT 5 MacDonald Hoague &amp; Bayless 705 Second Avenue, Suite 1500 6 Seattle, WA 98104 206.622.1604 davidw@mhb.com tiffanyc@mhb.com</p> <p>8</p> <p>9</p> <p>10 FOR THE PLAINTIFF ESTATE OF LEONARD THOMAS: 11 MEAGHAN M. DRISCOLL Connelly Law Offices 12 2301 North 30th Street Tacoma, WA 98403 13 253.593.5100 mdriscoll@connelly-law.com</p> <p>14</p> <p>15</p> <p>16 FOR THE DEFENDANTS: 17 JEREMY W. CULUMBER Keating, Bucklin &amp; McCormack, Inc., P.S. 18 800 Fifth Avenue, Suite 4141 Seattle, WA 98104 19 206.623.8861 jculumber@kbmlawyers.com</p> <p>20</p> <p>21</p> <p>22</p> <p>23 ALSO PRESENT: NONE</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1 SEATTLE, WASHINGTON; NOVEMBER 10, 2016</p> <p>2 1:33 P.M.</p> <p>3 --oOo--</p> <p>4</p> <p>5 MATTHEW WATSON, 6 sworn as a witness by the Certified Court Reporter, 7 testified as follows:</p> <p>8</p> <p>9 EXAMINATION</p> <p>10 BY MR. WHEDBEE:</p> <p>11 Q. Good afternoon, Officer Watson. My name is 12 David Whedbee. I represent the Estate of Leonard 13 Thomas -- sorry, I don't. Meaghan Driscoll here, my 14 co-counsel, represents the Estate of Leonard Thomas. I 15 represent Annalesa, Fredrick, and Elijah Thomas. Okay?</p> <p>16 A. Okay.</p> <p>17 Q. -- in this action. Can you state your name 18 and spell it for the record, please.</p> <p>19 A. Matthew Watson, M-a-t-t-h-e-w, W-a-t-s-o-n.</p> <p>20 Q. Have you ever been deposed before?</p> <p>21 A. Once, yeah.</p> <p>22 Q. What was that related to?</p> <p>23 A. It was for a fatality, a semitruck versus a 24 bicyclist.</p> <p>25 Q. Were you a witness or were you --</p>

<p style="text-align: right;">Page 61</p> <p>1 Q. Did he do anything that convinced you that he 2 was going to use a weapon against any of the officers 3 in the last ten minutes before the breach? 4 A. No. 5 Q. Okay. So tell me what happened when the 6 breach went off. 7 A. So obviously, the 3 side had the explosive 8 charge. They did what they were doing on the 3 side. 9 I wasn't involved in that. And then we launched on the 10 1 side from the 1-4 corner angle; went over the fence 11 on -- on the 1-4 corner here (indicating) on the other 12 side of the blue car. As I was going over the fence, 13 unbeknownst to me, the dog was charging at me. I 14 believe it was Wiley and Vance that shot the dog. 15 I went immediately for the front door because 16 Leonard was dragging the kid back in. Obviously, the 17 shot went, and I got to the front door. It was 18 partially open, I believe, and I just pushed it open. 19 And Leonard was sitting on his butt, if you will, 20 holding his kid like this (indicating). 21 Q. When you say "like this," you have your arms 22 crossed? 23 A. He had his arms wrapped around him in a death 24 clutch, the child's back against his chest. Derig was 25 the first guy from the 3 side to get to him. He was</p>	<p style="text-align: right;">Page 63</p> <p>1 Was his arms around his waist? 2 A. Don't remember. 3 Q. Was his arms around his neck? 4 A. Don't remember. I do remember him having his 5 arms wrapped around him in a manner he wasn't going to 6 let go. 7 Q. Okay. And was he saying anything? 8 A. I believe, "Don't take my kid." "Don't take 9 my son," something to that effect. 10 Q. Okay. And what was the -- was there a 11 particular tone in his voice when he was saying this? 12 A. He's screaming. I mean, as you can imagine. 13 I don't remember how -- you know, but it was -- it 14 wasn't in a calm-like manner. 15 Q. I mean, was he -- was he angry? Was he 16 panicked? Was he...? 17 A. I would say more screaming, panic, crying, 18 emotional type of way. 19 Q. Leonard was. 20 A. Yes. 21 Q. And I think that you used the term that he was 22 "dragging" -- or after the explosive breach went, then 23 I think you said that he was dragging his kid? 24 A. He came out and picked the kid up and went 25 back into the house.</p>
<p style="text-align: right;">Page 62</p> <p>1 hitting and punching him. And I was more or less 2 playing tug of war with Leonard, trying to rip the kid 3 out of his arms. I eventually got the kid broke free 4 and rushed him outside and passed him off to a 5 negotiator, which I believe was Malave, but I don't 6 recall. I think it was Malave. 7 Q. When you use the word "death clutch," what do 8 you mean? 9 A. A death clutch, I mean a tight grip. He 10 wasn't letting go of that kid. It was a -- as tight as 11 you could hold somebody. 12 Q. Is that because he was actually dying or -- 13 A. I don't know why he was. 14 Q. Okay. But he was just holding on to his kid. 15 A. Extremely tight. Screaming, the kid was 16 screaming. 17 Q. Where was he holding Elijah? 18 A. Like I said, he was on his butt, the best I 19 recall, and against his chest, with Elijah's back 20 against his chest. 21 Q. And arms on Elijah's chest? 22 A. Wrapped around him. I don't remember exactly 23 in what manner, but nonetheless, he was -- he was 24 holding him with his arms wrapped around him. 25 Q. Right. And I'm trying to figure out where.</p>	<p style="text-align: right;">Page 64</p> <p>1 Q. So -- and how did he pick the kid up? 2 A. I believe he was just more in a -- about -- if 3 I come up behind you and wrap my hands around you and 4 pick you up. 5 Q. Okay. So again -- 6 A. The kid's back to his chest, I believe that's 7 how it was. 8 Q. And again, was his arms around his waist or 9 around his chest? 10 A. I don't recall exactly. It wasn't in a manner 11 that you come out and pick your four-year-old up, chest 12 to chest. 13 Q. Okay. I mean, did you think that he was 14 strangling his kid? 15 A. I didn't know what he was doing with the kid. 16 Q. No, I know. But at the moment that you saw 17 him, was he strangling -- 18 A. No, I don't remember. I don't remember ever 19 thinking that he was strangling the kid, no. But I 20 remember thinking, Oh, shit. What's -- that's not -- 21 you've got a SWAT team that just blew your back door, 22 and you're going to take the kid back into that 23 environment? I remember thinking, This is not good. 24 Q. Okay. If you look at your -- or go ahead and 25 look at your statement on page 14?</p>





<p style="text-align: right;">Page 1</p> <p>1 UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON AT SEATTLE</p> <hr/> <p>3 FREDRICK and ANNALESA THOMAS; ) 4 and JO-HANNA READ, as ) Guardian ad Litem of E.T., a ) 5 minor, ) 6 Plaintiffs, ) 7 vs. ) 3:15-cv-05346 BJR 8 JASON CANNON; BRIAN MARKERT; ) 9 RYAN MICENKO; MICHAEL WILEY; ) 10 MICHAEL ZARO; CITY OF FIFE; ) CITY OF LAKEWOOD; and PIERCE ) COUNTY METRO SWAT TEAM, ) 11 Defendants. )</p> <hr/> <p>13 DEPOSITION UPON ORAL EXAMINATION OF 14 MICAH WILSON</p> <hr/> <p>16 11:03 A.M.</p> <p>17 NOVEMBER 7, 2016</p> <p>18 311 W. PIONEER</p> <p>19 PUYALLUP, WASHINGTON</p> <p>24 REPORTED BY: CINDI ULLMAN, CCR 2687</p>	<p style="text-align: right;">Page 3</p> <p>1 I N D E X</p> <p>2</p> <p>3 EXAMINATION BY: PAGE(S) 4 MS. CARTWRIGHT 4, 53 5 MS. DRISCOLL 46 6 7 8 9 10 11 12</p> <p>13 EXHIBITS FOR IDENTIFICATION PAGE 14 Exhibit 44 Hand-drawn diagram 13 15 Exhibit 45 Co-Op Cities Metro Crime Response 55 16 Unit: Interview transcript 17 18 19 20 21 22 23 24 25</p>
<p style="text-align: right;">Page 2</p> <p>1 A P P E A R A N C E S</p> <p>2</p> <p>3 FOR THE PLAINTIFFS: 4 TIFFANY M. CARTWRIGHT MacDonald Hoague &amp; Bayless 5 705 Second Avenue, Suite 1500 Seattle, WA 98104 6 206.622.1604 tiffanyc@mhb.com</p> <p>7</p> <p>8</p> <p>9 FOR THE ESTATE OF LEONARD THOMAS: 10 MEAGHAN M. DRISCOLL Connelly Law Offices 11 2301 North 30th Street Tacoma, WA 98403 12 253.593.5100 mdriscoll@connelly-law.com</p> <p>13</p> <p>14</p> <p>15 FOR THE DEFENDANTS: 16 JEREMY W. CULUMBER Keating, Bucklin &amp; McCormack, Inc., P.S. 17 800 Fifth Avenue, Suite 4141 Seattle, WA 98104 18 206.623.8861 jculumber@kbmlawyers.com</p> <p>19</p> <p>20</p> <p>21 ALSO PRESENT: NONE</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1 PUYALLUP, WASHINGTON; NOVEMBER 7, 2016</p> <p>2 11:03 A.M.</p> <p>3 --oOo--</p> <p>4</p> <p>5 MICAH WILSON, 6 sworn as a witness by the Certified Court Reporter, 7 testified as follows: 8</p> <p>9 EXAMINATION</p> <p>10 BY MS. CARTWRIGHT:</p> <p>11 Q. Good morning, Officer Wilson. Is that -- that 12 still the right title? 13 A. Detective now, but -- 14 Q. Detective. 15 A. -- either way. 16 Q. My name is Tiffany Cartwright. I represent 17 the parents of Leonard Thomas in this matter. And I 18 would like to start by asking you if you have ever been 19 deposed before. 20 A. I have not. 21 Q. So it's a little different than a normal 22 conversation. Even if you know what my question is 23 going to be, try to wait until I finish asking it, and 24 I'll wait for you to finish your answer so that the 25 court reporter can take down our conversation easily.</p>

Page 29

1 knowing that that wasn't a command that was meant for  
 2 me, and so I didn't seek clarification.  
 3 Q. Now, at some point you received permission to  
 4 set explosive breach charges on the back door; is that  
 5 right?  
 6 A. Our element was, yes.  
 7 Q. And what was your understanding of the plan at  
 8 that point as to how to use the explosive breach?  
 9 A. If I remember correctly, the plan was that if  
 10 he came -- because he had gone in and out several  
 11 times, even after the instruction not to let him go  
 12 back in. Almost very shortly after that, he went back  
 13 in, and I believe he may have come out and gone back in  
 14 another time after that.  
 15 And so we were -- like I said, if I recall  
 16 right, we were told when he comes back out again, we  
 17 were going to breach the back door and make entry into  
 18 the house, essentially, so that we occupied the house  
 19 at that point to prevent him from coming back in.  
 20 Q. Was there any concern about how Mr. Thomas  
 21 might react to the sound of the explosive breach?  
 22 A. The plan was to execute it when he was on the  
 23 front porch where there were more knowns and fewer  
 24 unknowns. He's there. The elements in the front can  
 25 see that he and the child are both there. And so I

Page 30

1 don't recall any discussions specifically about what  
 2 effect is the noise going to have on him other than the  
 3 typical effects of the noise are to cause people to  
 4 freeze if it's very surprising, unexpected. And so a  
 5 normal response is to freeze while trying to figure out  
 6 what was that. And by the time, you know, he has  
 7 figured out what it is, we would now be in his living  
 8 room and he could no longer come back inside the house.  
 9 Q. Have you ever been involved in any other  
 10 operations where an explosive breach has been used with  
 11 children in the building?  
 12 A. Well, the plan here was that the child wasn't  
 13 in the building when the breach went, but yes.  
 14 Q. And maybe that wasn't a very good question,  
 15 but in terms of where there have been --  
 16 A. Children present?  
 17 Q. -- children present with their -- with their  
 18 parents.  
 19 A. Yes.  
 20 Q. Do you think it would be a foreseeable  
 21 response to the sound of the explosion for a parent to  
 22 reach for their child?  
 23 A. Sure.  
 24 Q. So who made the decision to initiate the  
 25 breach?

Page 31

1 A. Command would make that decision.  
 2 Q. And how is that communicated to you?  
 3 A. By radio.  
 4 Q. And once the breach was initiated, what  
 5 happened?  
 6 A. The rear element made entry into the house  
 7 through the back door. The door didn't fall completely  
 8 inside the room due to the amount of stuff in the room,  
 9 so I recall having to kind of climb up over the door.  
 10 It was sort of -- sort of a wedge shape (indicating),  
 11 having to climb over the door and fit through that  
 12 wedge to get into that first room and then moving into  
 13 the -- first the living room and then eventually up the  
 14 stairs.  
 15 Q. And was it just a crowded, messy room, or was  
 16 it that stuff had been stacked in an attempt to block  
 17 the door?  
 18 A. I don't know. That room was dark. I remember  
 19 as I went through it, I remember being in a dark area  
 20 in the living room. Ahead was where the light was, and  
 21 so I was focused that way. I remember just climbing  
 22 over the door and heading towards the living room. I  
 23 don't recall what the obstruction was.  
 24 Q. And where were you when you heard the  
 25 gunshots?

Page 32

1 A. Again, having read my transcript, I indicated  
 2 that that, the sound of the gunshots was pretty close  
 3 to the time as I was crawling over the rear door. And  
 4 that seems to make sense with my memory.  
 5 Q. And what did you see when you got into the  
 6 living room?  
 7 A. When I got into the living room, I saw two  
 8 team members holding Mr. Thomas, and I saw a third team  
 9 member wrestling Mr. Thomas over the child briefly and  
 10 getting the child and turning around, taking the child  
 11 out the front door. I recall that.  
 12 During my interview, I had also described  
 13 seeing a fourth team member striking Mr. Thomas. I  
 14 vaguely recall that. And it seemed that that was an  
 15 attempt to essentially get him to let go of the child.  
 16 Q. And how long was the struggle to take the  
 17 child out of his arms?  
 18 A. It was very brief. Seconds. Not long.  
 19 Q. Was the child saying anything?  
 20 A. I don't recall the child saying anything.  
 21 Q. Was Mr. Thomas saying anything?  
 22 A. I recall hearing Mr. Thomas say something to  
 23 the effect of "Don't hurt my boy" or something like  
 24 that.  
 25 Q. Do you remember what his voice sounded like?

<p style="text-align: right;">Page 49</p> <p>1 moment?</p> <p>2 A. Yes.</p> <p>3 Q. When was the next time you saw him?</p> <p>4 A. Outside. After I left the house and I was</p> <p>5 walking back to somewhere, the medics were treating</p> <p>6 him.</p> <p>7 Q. Was he on a stretcher at that point?</p> <p>8 A. I don't recall.</p> <p>9 Q. Okay. Could you tell if he was breathing or</p> <p>10 moving at that point?</p> <p>11 A. I think he was.</p> <p>12 Q. What would be your best estimate of how much</p> <p>13 time transpired between when you first saw him standing</p> <p>14 with the officers holding him and later when you saw</p> <p>15 him with the medics?</p> <p>16 A. I can't estimate. I don't recall how much</p> <p>17 took place in between.</p> <p>18 Q. And I think you said earlier that time just</p> <p>19 moves strangely as you'd expect in a situation like</p> <p>20 this; is that right?</p> <p>21 A. Not exactly that. There's the perception of</p> <p>22 time passing during the thing which may be different</p> <p>23 than the actual passage of time, but also the fact that</p> <p>24 it was three and a half years ago and I don't recall</p> <p>25 the gaps.</p>	<p style="text-align: right;">Page 51</p> <p>1 or not thrown down hard.</p> <p>2 Q. I want to go back to pretty early on in your</p> <p>3 testimony. You talked about kind of the two elements</p> <p>4 that make up a hostage situation. The first element</p> <p>5 was whether the hostage is free to leave; is that</p> <p>6 accurate?</p> <p>7 A. (Witness nodding.)</p> <p>8 Q. Is that a "yes"?</p> <p>9 A. Yes. Sorry.</p> <p>10 Q. Does that element, meaning whether a hostage</p> <p>11 is free to leave or not, change or get distinguished at</p> <p>12 all if you're talking about a small child hostage?</p> <p>13 A. Not substantially.</p> <p>14 Q. Does it, the analysis change at all if it's a</p> <p>15 small child of, say, under five years old?</p> <p>16 A. In the sense that we will accommodate the</p> <p>17 release of a five-year-old differently than we would</p> <p>18 accommodate the release of a full-grown adult. But...</p> <p>19 Q. Wouldn't it be fair to say that any small</p> <p>20 child isn't really free to come and go as they please,</p> <p>21 but they're subject to what their parents tell them to</p> <p>22 do?</p> <p>23 A. In this context?</p> <p>24 Q. Just generally.</p> <p>25 A. In general, a parent is going to dictate</p>
<p style="text-align: right;">Page 50</p> <p>1 Q. Based on what you remember and reviewing the</p> <p>2 transcript, do you think it would have been more than</p> <p>3 five minutes that had transpired?</p> <p>4 A. It could have been.</p> <p>5 Q. Would it be somewhere between five and ten</p> <p>6 minutes?</p> <p>7 A. It could have been. Like I said, it was after</p> <p>8 I left the house. I don't recall how long I was in the</p> <p>9 house after searching.</p> <p>10 Q. Is it your understanding that the last words</p> <p>11 Leonard said were something to the effect of "Don't</p> <p>12 hurt my boy"?</p> <p>13 A. That was the -- that was all I heard him say.</p> <p>14 I don't know what else he may have said after that.</p> <p>15 Q. Okay. When Leonard was then moved onto the</p> <p>16 floor, did you -- you saw that happen, when other</p> <p>17 officers pushed him down?</p> <p>18 A. Right; as he was set down on the floor.</p> <p>19 Q. Okay. And was he struggling at all at that</p> <p>20 point, or was he pretty compliant; could you tell?</p> <p>21 A. I couldn't tell. I couldn't tell.</p> <p>22 Q. Was there any sort of thud or noise as he</p> <p>23 struck the ground?</p> <p>24 A. I don't recall hearing one. I -- my</p> <p>25 impression was that he was sort of maybe escorted down</p>	<p style="text-align: right;">Page 52</p> <p>1 whether or not a four-year-old comes or goes.</p> <p>2 Q. So a four-year-old isn't free to leave</p> <p>3 normally and walk out of the door and go get themselves</p> <p>4 an ice cream cone at McDonald's.</p> <p>5 A. Correct.</p> <p>6 Q. Okay. So with that in mind, does that change</p> <p>7 element one at all when you're dealing with children</p> <p>8 who are young in age in a supposed hostage situation?</p> <p>9 A. We are asking him to release the child to the</p> <p>10 police and with other -- with the child's other family</p> <p>11 members present, so he's still -- that's what he's</p> <p>12 expected to do. We're not asking him to let the child</p> <p>13 go to McDonald's and get an ice cream.</p> <p>14 Q. Okay. When you arrived on scene, you had</p> <p>15 expressed that you were told that Leonard was involved</p> <p>16 in a DV assault situation; is that correct?</p> <p>17 A. Correct.</p> <p>18 Q. Were you told that Leonard had been hit by his</p> <p>19 mother in that DV situation?</p> <p>20 A. I don't recall being told that.</p> <p>21 Q. If you had been told, do you think it's</p> <p>22 something you would have said in one of your interviews</p> <p>23 that happened after the incident?</p> <p>24 A. Possibly.</p> <p>25 Q. Did you take any notes or write anything down</p>

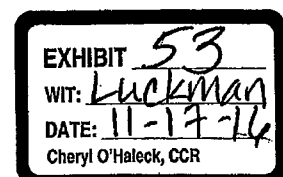


## Co-Op Cities Metro Crime Response Unit

This transcript was prepared by a third party that did not participate in the interview. It is a draft only as it has not been verified for complete accuracy. Only the audio/video file should be considered a true, complete and accurate record of the interview.

Subject of Interview: Sgt. Nils Luckman

Interviewer(s): Det. Todd Jordan



INTERVIEW WITH SERGEANT NILS LUCKMAN

Interviewer: Det. (Todd) Jordan

05-24-13/4:45 pm

Case # 13-1984

Page 14

581  
582 A: Right.  
583  
584 Q: ...ah, he - did he ever ah, tell you that he was going to harm ah, any of the  
585 policemen? Or is it just I hate the fucking cops?  
586  
587 A: No, no. It was I hate the fucking cops. He never made any direct threats...  
588  
589 Q: Mm-hm.  
590  
591 A: ...that I recall at all. Because even when he was saying get those fucking  
592 guys back off my property he was never saying - he goes, "I want you fucking  
593 guys off my property. I have posted no trespassing signs. Get off my fucking  
594 property." Yeah, never made any, you know, you fucking guys. What he  
595 brought up at one point was it sounded like the - the - the root of his anger  
596 toward the Fife cops was he said, "You fucking guys came here one time and I  
597 was the one that called the police and you came and you arrested me and you  
598 asked me if I used a closed fist or whatever." And he goes, "I would never hit  
599 a woman." He insisted he never hit a woman. He said at one point his mom  
600 hit him twice in the face. He said he was bleeding. So then I said to him,  
601 "Hey, can we get you some medical aid?" "I don't need medical aid." Um...  
602  
603 Q: Did he say where he was bleeding from?  
604  
605 A: He said he was bleeding from the face.  
606  
607 Q: From the face?  
608  
609 A: Yeah.  
610  
611 Q: Did he say what he was doing with the - I mean did he have some kind of ca-  
612 ah, tissue or?  
613  
614 A: No.  
615  
616 Q: He didn't say any of that stuff?  
617  
618 A: No, he didn't say anything. And when he said that about bleeding from the  
619 face, you know, I said to him, "You know, well how did you get cut? Or how  
620 did you get cut or why are you bleeding?" And that's when he said, "Well,  
621 you know." I said, "Is that when your mom hit you?" And he goes, "No, no.  
622 My mom didn't do anything." But he had told me earlier in the conversation...  
623  
624 Q: That mom...  
625



INTERVIEW WITH SERGEANT NILS LUCKMAN

Interviewer: Det. (Todd) Jordan

05-24-13/4:45 pm

Case # 13-1984

Page 15

626 A: ...that his mom had hit him.  
627  
628 Q: Yeah. Try not to get her in trouble with the police probably.  
629  
630 A: And he -and multiple times. And I said to him why we were there. We were  
631 there to investigate this assault that occurred between you and your mom. We  
632 don't know who's at fault. Well I'm not telling you anything. I'm not saying  
633 anything to send my mom to jail. Okay.  
634  
635 Q: Okay. And then ah, but still at no time did he threaten ah, he didn't want to  
636 like kill me, didn't say just fucking kill me or anything like that?  
637  
638 A: No. Didn't say anything like that to me.  
639  
640 Q: Okay. And then ah, and didn't threaten his son.  
641  
642 A: No.  
643  
644 Q: The only threat or the only danger that you know of is when ah, he reportedly  
645 hung the kid out the window.  
646  
647 A: Yeah. Yeah.  
648  
649 Q: And you're assuming that was on the second floor but you don't know because  
650 you couldn't see it from your position?  
651  
652 A: No.  
653  
654 Q: Okay.  
655  
656 A: So I - the only reason I'm - even at the time I would say I was pretty sure it  
657 was the second floor is because you could hear him - where initially I could  
658 hear him when he was yelling, because he was yelling and talking to me at the  
659 phone on the same time.  
660  
661 Q: Right.  
662  
663 A: When he was doing that, you could hear it was elevated.  
664  
665 Q: Okay.  
666  
667 A: You could hear the noise coming from up.  
668  
669 Q: Up, right.  
670

D-DISCL 000385

EXHIBIT 26

- 3 Officers shall exercise arrest powers when appropriate
- 4 Officers shall provide information that explains their rights as well as resources available to them
- 5 If a crime occurred, and the parties meet the definition of a family or household member, a report shall be written, regardless of an arrest or not
- 6 In addition to a general report, officers shall complete a Domestic Violence Supplemental form, obtain handwritten statements from victims and witnesses, obtain a medical release waiver and should take photographs of any visible injuries or damaged property
- 7 If officers are not able to establish probable cause that a crime occurred, the incident may be documented via MDC notes

**B Follow Up**

- 1 The Special Assault Section (SAU) generally conducts all follow up investigations on reports of domestic violence. The SAU supervisor is responsible for reviewing cases to establish if they should be assigned for follow up or forwarded to the appropriate prosecutor's office.

#### **41.2.7 Responding To Persons with Mental Illness**

**Principle:** People with mental illnesses function in day-to-day life, often going without being noticed. The continued development of psychotropic medications has allowed many to be freed from some or all of the symptoms of mental illnesses. However, when a mental illness has gone undiagnosed or untreated, often law enforcement professionals become the first responder to people suffering a mental crisis or episode. This standard is intended to provide officers with guidelines to allow them to recognize and give appropriate service to individuals in these situations.

**Practices**

- A **Mental Illness Recognition:** Listed below are some of the symptoms for the mental illnesses that law enforcement officer most frequently confront in a first responder role. This information was gathered from the National Institute of Mental Health.
  - 1 **Panic Disorder:** People with panic disorder have feelings of terror that strike suddenly and repeatedly with no warning. Common physical symptoms are feeling sweaty, weak, faint, dizzy, tingling or numbness in the hands, feeling flushed or chilled, nausea, chest pains, or a smothering sensation. Panic attacks generally peak within 10 minutes, but may last much longer.
  - 2 **Obsessive-Compulsive Disorder (OCD):** People with OCD experience anxious thoughts or rituals that feel that they can't control. The disturbing thoughts or images are called obsessions, and the rituals that are performed to try to prevent or get rid of them are called compulsions. There is no pleasure in carrying out the rituals, people are only trying to get temporary relief from the anxiety that grows if they don't perform them.
  - 3 **Post-Traumatic Stress Disorder (PTSD):** PTSD is a debilitating condition that can develop following a terrifying event. People with PTSD often experience nightmares and disturbing recollections during the day. They may also experience sleep problems, feel numb or detached, be easily startled, or feel irritable.
  - 4 **Bipolar Disorder:** People with Bipolar Disorder experience dramatic mood swings called episodes of mania and depression.
  - 5 **Symptoms of Mania:** Increased energy, activity and restlessness, Excessively euphoric mood, Extreme irritability, Racing thoughts, Little sleep needed, Poor judgment, Spending sprees, Provocative, intrusive, or aggressive behavior, and Abuse of drugs and/or alcohol.
  - 6 **Symptoms of Depression:** Lasting sad, anxious, or empty mood, Feelings of hopelessness or pessimism,

Decreased energy, a feeling of fatigue, Difficulty concentrating, remembering, or making decision, Sleeping too much or unable to sleep, Unintended weight loss or gain, Chronic pain or other persistent bodily symptoms that are not caused by physical illness or injury, and Thoughts of suicide

7. **Schizophrenia:** People with schizophrenia often suffer symptoms that include, distorted perceptions of reality, hallucinations and illusions, delusions, disordered thinking, neglect of basic hygiene, and a 'blunted' emotional expression
8. **Psychosis:** This is a severe or acute psychotic condition that leads to hallucinations and/or delusions. Psychosis may be a symptom of Bipolar Disorder or Schizophrenia
9. **Excited Delirium:** This condition is most often associated with substance abuse or mental illness. In almost every case, police are called because a subject is behaving in a bizarre fashion and is unresponsive to verbal direction. As police move to take custody of the individual a violent struggle ensues and police use some form of restraint to try and maintain control. Individuals struggle against the restraints and then lapse into tranquility. When checked, they have been found not to be breathing and efforts at resuscitation are futile. Common behaviors related to Excited Delirium include:
  - Unbelievable strength and endurance
  - Imperviousness to pain
  - Ability to offer effective resistance against multiple officers
  - Removal of clothing, or subject presents partially clothed or naked
  - Bizarre and violent behavior
  - Aggression
  - Hyperactivity
  - Extreme Paranoia
  - Incoherent shouting
  - Grunting or animal-like sounds while struggling with officers

The following characteristics may also be present

- Perspiration, victims are often described as drenched in sweat. (Occasionally the subject will not be sweating at all. This is usually due to a documented side-effect with certain prescribed mental health medications.)
- Foaming at the mouth
- Drooling
- Dilated pupils

- B. **Available Community Mental Health Resources:** Officers receive information about available community mental health resources during the mandated refresher training discussed in Section E of this section.
- C. **Dealing with the Mentally II:** The Police Executive Research Forum provided the information below.
  1. **General Approach and Interaction:** In general officer should use the following practices when interacting with people who have a mental illness.
    - Remain calm and avoid overreacting
    - Be helpful and professional
    - Follow procedures indicated on medical alert bracelets or necklaces
    - Indicate a willingness to understand and help
    - Speak simply and briefly, and move slowly
    - Remove distractions, upsetting influences and disruptive people
    - Be aware that the uniform and equipment may frighten the person
    - Recognize that the a delusional or hallucinatory experience is real to the person
    - Announce actions before initiating them (exception may be when taking combative person into custody)

- Do not force discussion
  - Do not maintain direct, continuous eye contact
  - Do not touch the person unless necessary for safety
  - Do not express anger, impatience or irritation
  - Assume the person that does not respond cannot hear
  - Do not mislead the person to believe that officers on scene think or feel the way the person does
2. Involuntary Custody Evaluation: RCW 71.05.150(4) allows a peace officer to cause a person to be taken into custody and immediately delivered to an evaluation and treatment center or the emergency department of a local hospital
- a. When: Whenever an officer receives information that as a result of a mental disorder a person presents an imminent likelihood of serious harm or is in imminent danger because of being gravely disabled
  - b. Use of Force: RCW 9A.16.020 states that any person may use force to prevent a mentally ill person from committing and act dangerous to any person, or in enforcing necessary restraint for the protection or restoration to health of the person, during such period only as is necessary to obtain legal authority for the restraint or custody of the person
  - c. Documentation: Mental health professionals must have "specific facts" presented in the police report in order for them to proceed in the mental health evaluation process. Officers will be sure to include all facts to indicate why the person was an imminent danger and will include any information regarding repeated and escalating patterns of behavior
    - 1. If all the necessary information cannot be included on the Mental Hold form, the officer will complete a typed narrative as soon as practical after clearing the call and FAX the additional information to the mental health professional
  - d. Notification Requirement: Whenever an officer places a combative into custody for a mental evaluation the officer shall check the box on the Mental Hold form requesting the written results of the mental health professional's investigation
3. Excited Delirium: If an officer is responding to a suspected case of Excited Delirium one of the most important steps they must take is to immediately request medics respond and stand-by until the individual is restrained. Once in custody and deemed a safe situation for medical personnel, then the subject should be checked out by the medics
4. Practices for Interrogations: The Constitution requires that the Miranda warnings be comprehended, not simply administered. If an officer doubts a person's capacity to understand his or her rights, in order to make an informed decision about whether to initiate questioning, the officer should ask the person to explain each of the Miranda warnings in his or her own words, and make a record of the person's explanations
- D. Entry Level Training: All new employees receive training in dealing with persons that have mental illnesses as part of their orientation
- E. Refresher Training: The Lakewood Police Department provides refresher training to all employees at least every three years. This training includes the identification of available community mental health resources

### 41.3 EQUIPMENT

**PHILOSOPHY** The Lakewood Police Department recognizes that our dedication to high standards creates the need to provide equipment that supports the efforts of our members. It is also important to ensure efficiency and cost control through the care and maintenance of the equipment.

EXHIBIT 27

address (although these may also be signs of an injury or Alzheimer's disease).

2. Delusions (i.e., the belief in thoughts or ideas that are false), such as delusions of grandeur ("I am Christ") or paranoid delusions ("Everyone is out to get me").
3. Hallucinations of any of the five senses (e.g. hearing voices commanding the person to act, feeling one's skin crawl, smelling strange odors, etc.).
4. The belief that one suffers from extraordinary physical maladies that are not possible, such as a person who is convinced that his heart has stopped beating for extended periods of time.
5. Extreme fright or depression.

#### **417.3 COMMON ENCOUNTERS WITH PERSONS WITH MENTAL ILLNESS**

Officers should be prepared to encounter a person with a mental illness at any time. Employees should ensure that people with a mental illness receive the necessary assistance to access available services. This may require time and patience beyond what is normally provided.

Common situations in which such individuals may be encountered include, but are not limited to, the following:

- (a) Wandering: Individuals with mental challenges may be found wandering aimlessly or engaged in repetitive or bizarre behaviors in a public place.
- (b) Seizures: Mentally ill persons are more subject to seizures and may be found in medical emergency situations.
- (c) Disturbances: Disturbances may develop when caregivers are unable to maintain control over mentally ill persons engaging in self-destructive behaviors.
- (d) Strange and bizarre behaviors: Repetitive and seemingly nonsensical motions and actions in public places, inappropriate laughing or crying, and personal endangerment.
- (e) Offensive, aggressive or suspicious persons: Socially inappropriate or unacceptable acts such as ignorance of personal space, annoyance of others, or inappropriate touching of oneself or others are sometimes associated with mentally ill persons who are not conscious of acceptable social behaviors.

#### **417.4 INITIAL RESPONSE TO CALLS INVOLVING PERSONS WITH MENTAL ILLNESS**

Upon initial response to potential mental-health related calls, officers must assess the scene and determine whether the situation is active or static. Information can be sought from family members, friends, or others at the scene who know the individual or his/her history. At a private residence where there is no immediate threat to the public or law enforcement, it is advisable to confer with the on-duty supervisor before deciding to contact the subject or place the subject into custody. In any case, an officer should routinely try to bring in the services of a community mental health professional or a crisis intervention team to engage the subject; attempt to deescalate the situation; and make a recommendation regarding any need to transport the subject to a triage facility, crisis stabilization unit, evaluation and treatment facility, or the emergency department of a local hospital. Consideration should be toward protecting the public and law enforcement officers.

- (a) Active Situation: A situation in which an active threat is present. Officers must consider factors that affect the safety of everyone involved. Does the subject pose an imminent threat and do they have the ability, means, and opportunity to carry out the threat? Officers may need to use reasonable force consistent with the departments Use of Force Policy (300) as necessary to neutralize the threat, secure subjects(s), make the scene safe, and continue an assessment of the people involved.



- (b) Static Situation: A situation in which there is no immediate threat or immediate need to take action. Officers should continually assess the people involved and monitor the situation for factors that may compromise safety. This type of condition may be conducive to using crisis intervention techniques.

#### **417.5 COMMUNICATION WITH THE MENTALLY ILL**

Officers should, when possible, establish a dialogue with the subject to develop trust and rapport. The following guidelines detail how to approach and interact with people who may have a mental illness, and who may be a crime victim, a witness or a suspect. These guidelines should be followed in all contacts, whether on the street or during more formal interviews and interrogations:

- (a) Speak calmly: Loud, stern tones will likely have either no effect or a negative effect on the individual.
- (b) Use non-threatening body language: Keep your hands by your sides if possible.
- (c) Eliminate commotion: Eliminate, to the degree possible, loud sounds, bright lights, sirens, and crowds. Move the individual to a calm environment if possible.
- (d) Keep animals away: Individuals with mental illness are often afraid of dogs or other large animals.
- (e) Look for personal identification: Medical tags or cards often indicate mental illness and will supply a contact name and telephone number.
- (f) If the person has a caregiver, the caregiver is often the best resource for specific advice on calming the person and ensuring both the officer's safety and the person's safety until the contact person arrives.
- (g) Prepare for a lengthy interaction: Unless there is an emergency, situations involving mentally ill individuals should not be rushed.
- (h) Use short, direct phrases: Too much talking can distract the mentally ill individual and confuse the situation.
- (i) Be attentive to sensory impairments: Many mentally ill individuals have sensory impairments that make it difficult to process information. Officers should not touch the person unless absolutely necessary. Use soft tones and gestures. Avoid quick movements. Use simple and direct language. Do not automatically interpret odd behavior as belligerence.
- (j) In many situations, and particularly when dealing with someone who is lost or has wandered away, the officer may gain improved response by accompanying the person through a building or neighborhood to seek visual clues.
- (k) Be aware of different forms of communication. Mentally ill individuals often use signals or gestures instead of words, or demonstrate limited speaking capabilities.
- (l) Do not get angry or frustrated.
- (m) Maintain a safe distance.

#### **417.5.1 INTERVIEW AND INTERROGATION FOR PERSONS WITH MENTAL ILLNESS**

Officers attempting to conduct an interview or interrogation with a mentally ill individual should consider the following:

- (a) Lack of eye contact or strange actions should not be interpreted as indications of deceit.

- (b) Use simple and straightforward language.
- (c) Do not suggest answers, attempt to complete thoughts of persons slow to respond, or pose hypothetical conclusions.
- (d) Recognize that the individual might be easily manipulated and highly suggestible

#### **417.6 DISPOSITION OF CALLS INVOLVING MENTALLY ILL PERSONS**

Once sufficient information has been collected about the nature of the situation, and the situation has been stabilized, there are a range of options officers should consider when selecting an appropriate resolution. These options include the following:

- (a) Refer, or arrange transport for, the person for medical attention.
- (b) Outright release.
- (c) Release to care of family, caregiver or mental health provider.
- (d) Refer, or arrange transport to, a substance abuse facility.
- (e) Assist in arranging voluntary admission to a mental health facility.
- (f) Arrange transport for involuntary emergency mental health evaluation if the person's behavior meets the criteria for this action.
- (g) Arrest if a crime has been committed.

#### **417.7 SAFETY**

Given the unpredictable and sometimes violent nature of the mentally ill, officers should never compromise or jeopardize their safety or the safety of others when dealing with individuals displaying symptoms of mental illness.

Not all mentally ill persons are dangerous. Some may represent danger only under certain circumstances or conditions. Officers may use several indicators to determine whether an apparently mentally ill person represents an immediate or potential danger to himself/herself, the officer, or others. These include the following:

- (a) The availability of any weapons to the suspect.
- (b) Statements by the person that suggest to the officer that the individual is prepared to commit a violent or dangerous act. Such comments may range from subtle innuendos to direct threats that, when taken in conjunction with other information, paint a more complete picture of the potential for violence.
- (c) A personal history that reflects prior violence under similar or related circumstances. The disturbed person's history may be known to the officer, family, friends, or neighbors who may be able to provide helpful information.
- (d) Lack of physical control over emotions of rage, anger, fright, or agitation. Signs of a lack of control include extreme agitation, inability to sit still or communicate effectively, wide eyes, and rambling thoughts and speech. Clutching one's self or other objects to maintain control; begging to be left alone; or offering frantic assurances that one is all right may also suggest the individual is close to losing control.
- (e) Officers must evaluate the volatility of the environment. Agitators that may affect the person or a particular combustible environment that may incite violence should be taken into account.

Policy  
**426**

**Buckley Police Department**  
Policy Manual

## **Crisis Intervention Incidents**

### **426.1 PURPOSE AND SCOPE**

This policy provides guidelines for interacting with those who may be experiencing a mental health or emotional crisis. Interaction with such individuals has the potential for miscommunication and violence. It often requires an officer to make difficult judgments about a person's mental state and intent in order to effectively and legally interact with the individual.

#### **426.1.1 DEFINITIONS**

Definitions related to this policy include:

**Person in crisis** - A person whose level of distress or mental health symptoms have exceeded the person's internal ability to manage his/her behavior or emotions. A crisis can be precipitated by any number of things, including an increase in the symptoms of mental illness despite treatment compliance; non-compliance with treatment, including a failure to take prescribed medications appropriately; or any other circumstance or event that causes the person to engage in erratic, disruptive or dangerous behavior that may be accompanied by impaired judgment.

### **426.2 POLICY**

The Buckley Police Department is committed to providing a consistently high level of service to all members of the community and recognizes that persons in crisis may benefit from intervention. The Department will collaborate, where feasible, with mental health professionals to develop an overall intervention strategy to guide its members' interactions with those experiencing a mental health crisis. This is to ensure equitable and safe treatment of all involved.

### **426.3 SIGNS**

Members should be alert to any of the following possible signs of mental health issues or crises:

- (a) A known history of mental illness
- (b) Threats of or attempted suicide
- (c) Loss of memory
- (d) Incoherence, disorientation or slow response
- (e) Delusions, hallucinations, perceptions unrelated to reality or grandiose ideas
- (f) Depression, pronounced feelings of hopelessness or uselessness, extreme sadness or guilt
- (g) Social withdrawal
- (h) Manic or impulsive behavior, extreme agitation, lack of control
- (i) Lack of fear
- (j) Anxiety, aggression, rigidity, inflexibility or paranoia

Members should be aware that this list is not exhaustive. The presence or absence of any of these should not be treated as proof of the presence or absence of a mental health issue or crisis.

**Buckley Police Department**  
Policy Manual

*Crisis Intervention Incidents*

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**426.4 COORDINATION WITH MENTAL HEALTH PROFESSIONALS**

The Chief of Police should designate an appropriate Assistant Chief to collaborate with mental health professionals to develop an education and response protocol. It should include a list of community resources, to guide department interaction with those who may be suffering from mental illness or who appear to be in a mental health crisis.

**426.5 FIRST RESPONDERS**

Safety is a priority for first responders. It is important to recognize that individuals under the influence of alcohol, drugs or both may exhibit symptoms that are similar to those of a person in a mental health crisis. These individuals may still present a serious threat to officers; such a threat should be addressed with reasonable tactics. Nothing in this policy shall be construed to limit an officer's authority to use reasonable force when interacting with a person in crisis.

Officers are reminded that mental health issues, mental health crises and unusual behavior alone are not criminal offenses. Individuals may benefit from treatment as opposed to incarceration.

An officer responding to a call involving a person in crisis should:

- (a) Promptly assess the situation independent of reported information and make a preliminary determination regarding whether a mental health crisis may be a factor.
- (b) Request available backup officers and specialized resources as deemed necessary and, if it is reasonably believed that the person is in a crisis situation, use conflict resolution and de-escalation techniques to stabilize the incident as appropriate.
- (c) If feasible, and without compromising safety, turn off flashing lights, bright lights or sirens.
- (d) Attempt to determine if weapons are present or available.
- (e) Take into account the person's mental and emotional state and potential inability to understand commands or to appreciate the consequences of his/her action or inaction, as perceived by the officer.
- (f) Secure the scene and clear the immediate area as necessary.
- (g) Employ tactics to preserve the safety of all participants.
- (h) Determine the nature of any crime.
- (i) Request a supervisor, as warranted.
- (j) Evaluate any available information that might assist in determining cause or motivation for the person's actions or stated intentions.
- (k) If circumstances reasonably permit, consider and employ alternatives to force.

**426.6 DE-ESCALATION**

Officers should consider that taking no action or passively monitoring the situation may be the most reasonable response to a mental health crisis.

## Buckley Police Department

### Policy Manual

#### *Crisis Intervention Incidents*

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Once it is determined that a situation is a mental health crisis and immediate safety concerns have been addressed, responding members should be aware of the following considerations and should generally:

- Evaluate safety conditions.
- Introduce themselves and attempt to obtain the person's name.
- Be patient, polite, calm, courteous and avoid overreacting.
- Speak and move slowly and in a non-threatening manner.
- Moderate the level of direct eye contact.
- Remove distractions or disruptive people from the area.
- Demonstrate active listening skills (e.g., summarize the person's verbal communication).
- Provide for sufficient avenues of retreat or escape should the situation become volatile.

Responding officers generally should not:

- Use stances or tactics that can be interpreted as aggressive.
- Allow others to interrupt or engage the person.
- Corner a person who is not believed to be armed, violent or suicidal.
- Argue, speak with a raised voice or use threats to obtain compliance.

#### **426.7 INCIDENT ORIENTATION**

When responding to an incident that may involve mental illness or a mental health crisis, the officer should request that the dispatcher provide critical information as it becomes available. This includes:

- (a) Whether the person relies on drugs or medication, or may have failed to take his/her medication.
- (b) Whether there have been prior incidents, suicide threats/attempts, and whether there has been previous police response.
- (c) Contact information for a treating physician or mental health professional.

Additional resources and a supervisor should be requested as warranted.

#### **426.8 SUPERVISOR RESPONSIBILITIES**

A supervisor should respond to the scene of any interaction with a person in crisis. Responding supervisors should:

- (a) Attempt to secure appropriate and sufficient resources.
- (b) Closely monitor any use of force, including the use of restraints, and ensure that those subjected to the use of force are provided with timely access to medical care (see the Handcuffing and Restraints Policy).

## Buckley Police Department

### Policy Manual

#### *Crisis Intervention Incidents*

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- (c) Consider strategic disengagement. Absent an imminent threat to the public and, as circumstances dictate, this may include removing or reducing law enforcement resources or engaging in passive monitoring.
- (d) Ensure that all reports are completed and that incident documentation uses appropriate terminology and language.
- (e) Conduct an after-action tactical and operational debriefing, and prepare an after-action evaluation of the incident to be forwarded to the Assistant Chief.
- (f) Evaluate whether a critical incident stress management debriefing for involved members is warranted.

#### **426.9 INCIDENT REPORTING**

Members engaging in any oral or written communication associated with a mental health crisis should be mindful of the sensitive nature of such communications and should exercise appropriate discretion when referring to or describing persons and circumstances.

Members having contact with a person in crisis should keep related information confidential, except to the extent that revealing information is necessary to conform to department reporting procedures or other official mental health or medical proceedings.

##### **426.9.1 DIVERSION**

Individuals who are not being arrested should be processed in accordance with the Emergent Detentions Policy.

#### **426.10 CIVILIAN INTERACTION WITH PEOPLE IN CRISIS**

Civilian members may be required to interact with persons in crisis in an administrative capacity, such as dispatching, records request, and animal control issues.

- (a) Members should treat all individuals equally and with dignity and respect.
- (b) If a member believes that he/she is interacting with a person in crisis, he/she should proceed patiently and in a calm manner.
- (c) Members should be aware and understand that the person may make unusual or bizarre claims or requests.

If a person's behavior makes the member feel unsafe, if the person is or becomes disruptive or violent, or if the person acts in such a manner as to cause the member to believe that the person may be harmful to him/herself or others, an officer should be promptly summoned to provide assistance.

#### **426.11 EVALUATION**

The Assistant Chief designated to coordinate the crisis intervention strategy for this department should ensure that a thorough review and analysis of the department response to these incidents is conducted annually. The report will not include identifying information pertaining to any involved



Policy  
**429**

Sumner Police Department  
Policy Manual

## Crisis Intervention Incidents

### 429.1 PURPOSE AND SCOPE

This policy provides guidelines for interacting with those who may be experiencing a mental health or emotional crisis. Interaction with such individuals has the potential for miscommunication and violence. It often requires an officer to make difficult judgments about a person's mental state and intent in order to effectively and legally interact with the individual.

#### 429.1.1 DEFINITIONS

Definitions related to this policy include:

**Person in crisis** - A person whose level of distress or mental health symptoms have exceeded the person's internal ability to manage his/her behavior or emotions. A crisis can be precipitated by any number of things, including an increase in the symptoms of mental illness despite treatment compliance; non-compliance with treatment, including a failure to take prescribed medications appropriately; or any other circumstance or event that causes the person to engage in erratic, disruptive or dangerous behavior that may be accompanied by impaired judgment.

### 429.2 POLICY

The Sumner Police Department is committed to providing a consistently high level of service to all members of the community and recognizes that persons in crisis may benefit from intervention. The Department will collaborate, where feasible, with mental health professionals to develop an overall intervention strategy to guide its members' interactions with those experiencing a mental health crisis. This is to ensure equitable and safe treatment of all involved.

### 429.3 SIGNS

Members should be alert to any of the following possible signs of mental health issues or crises:

- (a) A known history of mental illness
- (b) Threats of or attempted suicide
- (c) Loss of memory
- (d) Incoherence, disorientation or slow response
- (e) Delusions, hallucinations, perceptions unrelated to reality or grandiose ideas
- (f) Depression, pronounced feelings of hopelessness or uselessness, extreme sadness or guilt
- (g) Social withdrawal
- (h) Manic or impulsive behavior, extreme agitation, lack of control
- (i) Lack of fear
- (j) Anxiety, aggression, rigidity, inflexibility or paranoia

Members should be aware that this list is not exhaustive. The presence or absence of any of these should not be treated as proof of the presence or absence of a mental health issue or crisis.



## Sumner Police Department

### Policy Manual

#### *Crisis Intervention Incidents*

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##### **429.4 FIRST RESPONDERS**

Safety is a priority for first responders. It is important to recognize that individuals under the influence of alcohol, drugs or both may exhibit symptoms that are similar to those of a person in a mental health crisis. These individuals may still present a serious threat to officers; such a threat should be addressed with reasonable tactics. Nothing in this policy shall be construed to limit an officer's authority to use reasonable force when interacting with a person in crisis.

Officers are reminded that mental health issues, mental health crises and unusual behavior alone are not criminal offenses. Individuals may benefit from treatment as opposed to incarceration.

An officer responding to a call involving a person in crisis should:

- (a) Promptly assess the situation independent of reported information and make a preliminary determination regarding whether a mental health crisis may be a factor.
- (b) Request available backup officers and specialized resources as deemed necessary and, if it is reasonably believed that the person is in a crisis situation, use conflict resolution and de-escalation techniques to stabilize the incident as appropriate.
- (c) If feasible, and without compromising safety, turn off flashing lights, bright lights or sirens.
- (d) Attempt to determine if weapons are present or available.
- (e) Take into account the person's mental and emotional state and potential inability to understand commands or to appreciate the consequences of his/her action or inaction, as perceived by the officer.
- (f) Secure the scene and clear the immediate area as necessary.
- (g) Employ tactics to preserve the safety of all participants.
- (h) Determine the nature of any crime.
- (i) Request a supervisor, as warranted.
- (j) Evaluate any available information that might assist in determining cause or motivation for the person's actions or stated intentions.
- (k) If circumstances reasonably permit, consider and employ alternatives to force.

##### **429.5 DE-ESCALATION**

Officers should consider that taking no action or passively monitoring the situation may be the most reasonable response to a mental health crisis.

Once it is determined that a situation is a mental health crisis and immediate safety concerns have been addressed, responding members should be aware of the following considerations and should generally:

- Evaluate safety conditions.
- Introduce themselves and attempt to obtain the person's name.
- Be patient, polite, calm, courteous and avoid overreacting.
- Speak and move slowly and in a non-threatening manner.

## Sumner Police Department

### Policy Manual

#### *Crisis Intervention Incidents*

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- Moderate the level of direct eye contact.
- Remove distractions or disruptive people from the area.
- Demonstrate active listening skills (e.g., summarize the person's verbal communication).
- Provide for sufficient avenues of retreat or escape should the situation become volatile.

Responding officers generally should not:

- Use stances or tactics that can be interpreted as aggressive.
- Allow others to interrupt or engage the person.
- Corner a person who is not believed to be armed, violent or suicidal.
- Argue, speak with a raised voice or use threats to obtain compliance.

#### **429.6 INCIDENT ORIENTATION**

When responding to an incident that may involve mental illness or a mental health crisis, the officer should request that the dispatcher provide critical information as it becomes available. This includes:

- (a) Whether the person relies on drugs or medication, or may have failed to take his/her medication.
- (b) Whether there have been prior incidents, suicide threats/attempts, and whether there has been previous police response.
- (c) Contact information for a treating physician or mental health professional.

Additional resources and a supervisor should be requested as warranted.

#### **429.7 SUPERVISOR RESPONSIBILITIES**

A responding to a crisis intervention incident should:

- (a) Attempt to secure appropriate and sufficient resources.
- (b) Closely monitor any use of force, including the use of restraints, and ensure that those subjected to the use of force are provided with timely access to medical care (see the Handcuffing and Restraints Policy).
- (c) Consider strategic disengagement. Absent an imminent threat to the public and, as circumstances dictate, this may include removing or reducing law enforcement resources or engaging in passive monitoring.
- (d) Ensure that all reports are completed and that incident documentation uses appropriate terminology and language.
- (e) Conduct any after-action tactical or operational debriefing as may be warranted. .
- (f) Evaluate whether a critical incident stress management debriefing for involved members is warranted.

## Sumner Police Department

### Policy Manual

#### *Crisis Intervention Incidents*

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#### **429.8 INCIDENT REPORTING**

Members engaging in any oral or written communication associated with a mental health crisis should be mindful of the sensitive nature of such communications and should exercise appropriate discretion when referring to or describing persons and circumstances.

Members having contact with a person in crisis should keep related information confidential, except to the extent that revealing information is necessary to conform to department reporting procedures or other official mental health or medical proceedings.

##### **429.8.1 DIVERSION**

Individuals who are not being arrested should be processed in accordance with the Emergent Detentions Policy.

#### **429.9 CIVILIAN INTERACTION WITH PEOPLE IN CRISIS**

Civilian members may be required to interact with persons in crisis in an administrative capacity, such as dispatching, records request, and animal control issues.

- (a) Members should treat all individuals equally and with dignity and respect.
- (b) If a member believes that he/she is interacting with a person in crisis, he/she should proceed patiently and in a calm manner.
- (c) Members should be aware and understand that the person may make unusual or bizarre claims or requests.

If a person's behavior makes the member feel unsafe, if the person is or becomes disruptive or violent, or if the person acts in such a manner as to cause the member to believe that the person may be harmful to him/herself or others, an officer should be promptly summoned to provide assistance.

#### **429.10 TRAINING**

In coordination with the mental health community and appropriate stakeholders, the Department will develop and provide comprehensive education and training to all department members to enable them to effectively interact with persons in crisis.

Training shall include mandated training in crisis intervention, certified by the Criminal Justice Training Commission, as required by Washington law (RCW 43.101.427).

EXHIBIT 28

EXHIBIT 28



Don Anderson  
Mayor

October 18, 2013

Jason Whalen  
Deputy Mayor

Officer Brian Markert  
9401 Lakewood Drive SW  
Lakewood, WA 98499

Mary Moss  
Councilmember

RE: 2013SR-002

Dear Officer Markert,

Michael D. Brandstetter  
Councilmember

On October 15, 2013, a Professional Standards Shooting Review Board was convened for the purpose of reviewing incident 2013SR-002 in which you fired your weapon during the course of your duty.

Helen McGovern-Pilant  
Councilmember


After a thorough review of the known facts and circumstances surrounding the incident, the board unanimously ruled your shooting lawful and within LPD Policy, and this matter will be considered closed.

Marie Barth  
Councilmember

As you know, a thorough review of incidents of this nature is an important component of community trust, and I thank you for your patience and cooperation in this matter.

Paul Bocchi  
Councilmember

Sincerely,

  
Bret Farrar  
Chief of Police

John J. Caulfield  
City Manager

cc: Assistant Chief Mike Zaro  
Lieutenant Alwine  
Sergeant Eakes  
Officer Markert's Division File



**LAKEWOOD POLICE DEPARTMENT**  
**ADMINISTRATIVE LEAVE/RELIEF OF DUTY NOTICE**

Employee Name Brian Markert	Pers. No. 109	Division Assignment NPO & SWAT	Supervisor Eakes
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**ADMINISTRATIVE LEAVE**

You are hereby placed on administrative leave effective 4/24/13 for the following reason:

- ☒ Officer involved shooting or other use of force resulting in death or substantial bodily injury.
- ☐ Involvement in a critical incident.
- ☐ Active duty status may be detrimental in your current assignment with the department.
- ☐ Required by department policy, procedure or regulation. Cite the applicable policy, procedure or regulation:
- ☐ The Chief/designee has directed administrative leave.

**RELIEF OF DUTY**

You are hereby relieved of duty effective \_\_\_\_\_ for the following reason(s):

- ☐ Active duty status may be detrimental in your current assignment with the department.
- ☐ Allegations of such a serious nature that termination is the likely outcome if they are found to be true.
- ☐ Presence of employee in the work force may be detrimental.
- ☐ Required by department policy, procedure or regulation. Cite the applicable policy, procedure or regulation:

**EQUIPMENT:** Mark the box for any department property/equipment that was REMOVED from the employee when placed on Administrative Leave/Relief of Duty:

☐ Firearm ☐ Radio ☐ Badge ☐ Premise Card(s) ☐ LPD ID ☐ Vehicle ☐ Keys

**RESTRICTIONS:**

- ☒ Employee is authorized to carry firearms (including concealed weapons, department issued or personally owned).
- ☐ Employee is **NOT** authorized to carry firearms (including concealed weapons, department issued or personally owned).
- ☐ Employee is **NOT** authorized to work Off-Duty or Outside Employment for the duration of the Administrative Leave.

**PART I: ADMINISTRATIVE LEAVE/RELIEF OF DUTY WITH PAY**

You are to be available for duty or investigative purposes during the following period, unless otherwise directed by the PSS Supervisor. You are now assigned to the PSS Supervisor and will report to him/her for all supervisory needs. You must be accessible by phone and will report to the PSS Supervisor by phone at the beginning of each shift. You must be able to report for duty in order to receive your regular pay.

- ☒ During your regularly scheduled shift.
- ☐ During a new shift effective: \_\_\_\_\_, Monday through Friday, 0800-1600 hours.
- If you have been receiving Shift Differential and/or Assignment Differential Pay you will continue to do so during this period.
- You are considered off on holidays and will not need to be available unless otherwise instructed by your supervisor or the investigating authority.

Employee Signature [Signature] Pers. No. 109 Date 4/24/13 Relieving Authority Signature [Signature] Pers. No. 7 Date 5-24-13

See Distribution Below

**PART II: RELIEF OF DUTY WITHOUT PAY**

You have been placed in a relief of duty status without pay effective \_\_\_\_\_. You are required to inform your Unit commander of where you can be reached by phone at all times in the event you are needed to report for investigative purposes. You will be in a paid status for the period in which you are reporting for investigative purposes.

Unit Commander Signature \_\_\_\_\_ Pers. No. \_\_\_\_\_ Date \_\_\_\_\_ Assistant Chief Signature \_\_\_\_\_ Pers. No. \_\_\_\_\_ Date \_\_\_\_\_

Chief Signature \_\_\_\_\_ Pers. No. \_\_\_\_\_ Date \_\_\_\_\_

See Distribution Below

**DISTRIBUTION:**

A copy of this document must be given to the employee and Routed immediately to the following **AT EACH STEP:**  
 Chief of Police \* Human Resources \* Professional Standards \* The Appropriate Guild/Association  
 If placed in a Temporary Assignment, copy also to temporary assignment command \* The signed original document will be filed in Professional Standards when completed.

Employee Name Brian Markert	Pers. No. 109	Bureau of Assignment	Budget #
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**PART III: TEMPORARY DUTY ASSIGNMENT**

You will be placed in a temporary duty assignment until further notice by your supervisor or the investigating authority. You are to report to your new temporary assignments as follows:

on \_\_\_\_\_ at \_\_\_\_\_ hours.

To: \_\_\_\_\_ At Location \_\_\_\_\_

Your work shift is \_\_\_\_\_ hours to \_\_\_\_\_ hours, and your RDOs will be: \_\_\_\_\_.

_____ Employee Signature	_____ Pers. No.	_____ Date	_____ Unit Commander Signature	_____ Pers. No.	_____ Date
_____ Relieving Authority Signature	_____ Pers. No.	_____ Date	_____ Division Chief Signature	_____ Pers. No.	_____ Date
_____ Chief of Police	_____ Pers. No.	_____ Date			

Note any equipment/credentials that may be returned to employee.  
**See Distribution Below**

**PART IV: RETURN FROM RELIEF OF DUTY OR TEMPORARY DUTY ASSIGNMENT**

**EMPLOYEE RETURNED TO DUTY: 6/10/13**  
Date

Your work shift is \_\_\_\_\_ hours to \_\_\_\_\_ hours, and your RDOs will be: \_\_\_\_\_.

Reason: \_\_\_\_\_

_____ Employee Signature	_____ Pers. No.	_____ Date	_____ Relieving Authority Signature	_____ Pers. No.	_____ Date
_____ Division Chief Signature	_____ Pers. No.	_____ Date			

**See Distribution Below**

**DISTRIBUTION:**

A copy of this document must be given to the employee and Routed immediately to the following **AT EACH STEP:**  
 Chief of Police \* Human Resources \* Professional Standards \*\* The Appropriate Guild/Association  
 If placed in a Temporary Assignment, fax also to temporary bureau/area command \* The signed original document will be filed in Professional Standards when completed.





# Lakewood Police Department Shooting Review Board



Review #: 2013SR-002

Reviewer Name: Paul Osness

Date of Review: 10/15/13

1) Agree with the facts as presented: ☒ YES  
☐ NO

2) Officer name: Brian Markert

Were the Officer's actions within policy?

☒ YES ☐ No

Officer name: \_\_\_\_\_

Were the Officer's actions within policy?

☒ YES ☐ No

3) Recommendations for training or equipment improvements:-

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Board Member Signature: [Signature]



# Lakewood Police Department Shooting Review Board



Review #: 2013SR-002

Reviewer Name: DAVID GUTTA

Date of Review: 10/15/13

1) Agree with the facts as presented: ☒ YES  
☐ NO

2) Officer name: Brian Markert

Were the Officer's actions within policy?

☒ YES ☐ No

Officer name: \_\_\_\_\_

Were the Officer's actions within policy?

☐ YES ☐ No

3) Recommendations for training or equipment improvements:-

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Board Member Signature: David Gutta



# Lakewood Police Department Shooting Review Board



Review #: 2013SR-002

Reviewer Name: Michael Zaro

Date of Review: 10-15-13

1) Agree with the facts as presented: ☒ YES  
☐ NO

2) Officer name: B. Markert

Were the Officer's actions within policy?

☒ YES ☐ No

Officer name: \_\_\_\_\_

Were the Officer's actions within policy?

☐ YES ☐ No

3) Recommendations for training or equipment improvements:-

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Board Member Signature: [Signature]

## Lakewood Police Department Memo



Date: 10/15/13

To: Chief Farrar

Cc:

From: Sgt. Unfred

Subject: Shooting Review Board for 2013SR-002

Chief Farrar,

On 10/15/13, the Professional Standards Unit convened a Shooting Review Board to review the circumstances regarding an on-duty firearm discharge by Ofc. Markert on 04/24/13.

The board consisted of Assistant Chief Zaro, Lt. Guttu, and Rangemaster Ofc. Osness. Sgt. Hall, Det. B. Johnson, Fife PD Lt. Thompson, Fife PD Det. Gow, and Bonney Lake PD Det. Byerly presented the complete case investigation report. All of the forensic evidence fully supported and coincided with all of the Officer and witness statements from the incident.

The board voted unanimously to accept the facts and circumstances as presented in the case file. The board also unanimously determined that Ofc. Markert acted lawfully and within department policy and procedures when he discharged his firearm during this incident.

There were no recommendations for training or equipment improvements. The board hereby recommends that this Firearm Discharge be ruled Within Policy.

A handwritten signature in black ink that reads "John Unfred". The signature is written in a cursive, flowing style.

Sgt. Unfred  
Professional Standards Unit





Advanced Behavioral Medicine  
and  
Neuropsychology Associates, PLLC

2013 South 19<sup>th</sup> Street  
Tacoma, WA 98405  
(253) 383-3355  
FAX (253) 383-3627

Edwin L. Hill, Ph.D.  
Donna M. Lidren, Ph.D.  
Barbara Dahl, Ph.D.  
Phillip S. Tate, Ph.D.  
Kathryn Sawyer, Ph.D.

August 30, 2013

Chief Bret Farrar  
Lakewood Police Department  
9401 Lakewood Drive S.W.  
Lakewood, WA. 98499

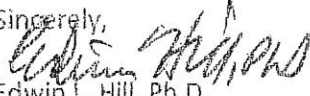
RE: Officer Brian Markert  
Last 4 SSN: 8417  
D.O.B.: 10/28/1969

Dear Chief Farrar:

This letter is to notify you that I met with Officer Markert today to complete his 3 month follow-up Post-Crisis Education/Advisory meeting following the May 24, 2013 shooting incident in Fife, Washington in which he was involved. Officer Markert continues to present and report no stress related issues that might disrupt his ability to perform his duties effectively and safely. He was apprised of possible symptoms that might emerge in the future as part of a delayed stress reaction. We agreed to schedule his required 6 month follow-up meeting in 3 months to review whether he remains free of disruptive symptoms.

Thank you for the opportunity to be of service to the Lakewood Police Department. If you have any questions, please do not hesitate to contact me.

Sincerely,

  
Edwin L. Hill, Ph.D.

Licensed Psychologist (#984)



## Lakewood Police Department

### Personnel Memo P2013-050

To: All Personnel  
From: Professional Standards Section  
Date: June 7, 2013, 2013  
Re: Ofcr. Brian Markert returned to full duty

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Effective June 10, 2013 Ofcr. Brian Markert has been returned to full duty.

Authorized by:

A handwritten signature in black ink, appearing to read "Bret Farrar", with a long horizontal line extending from the end of the signature.

Bret Farrar  
Chief of Police